

No. 14039

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HOME DAIRIES COMPANY,
Respondent.

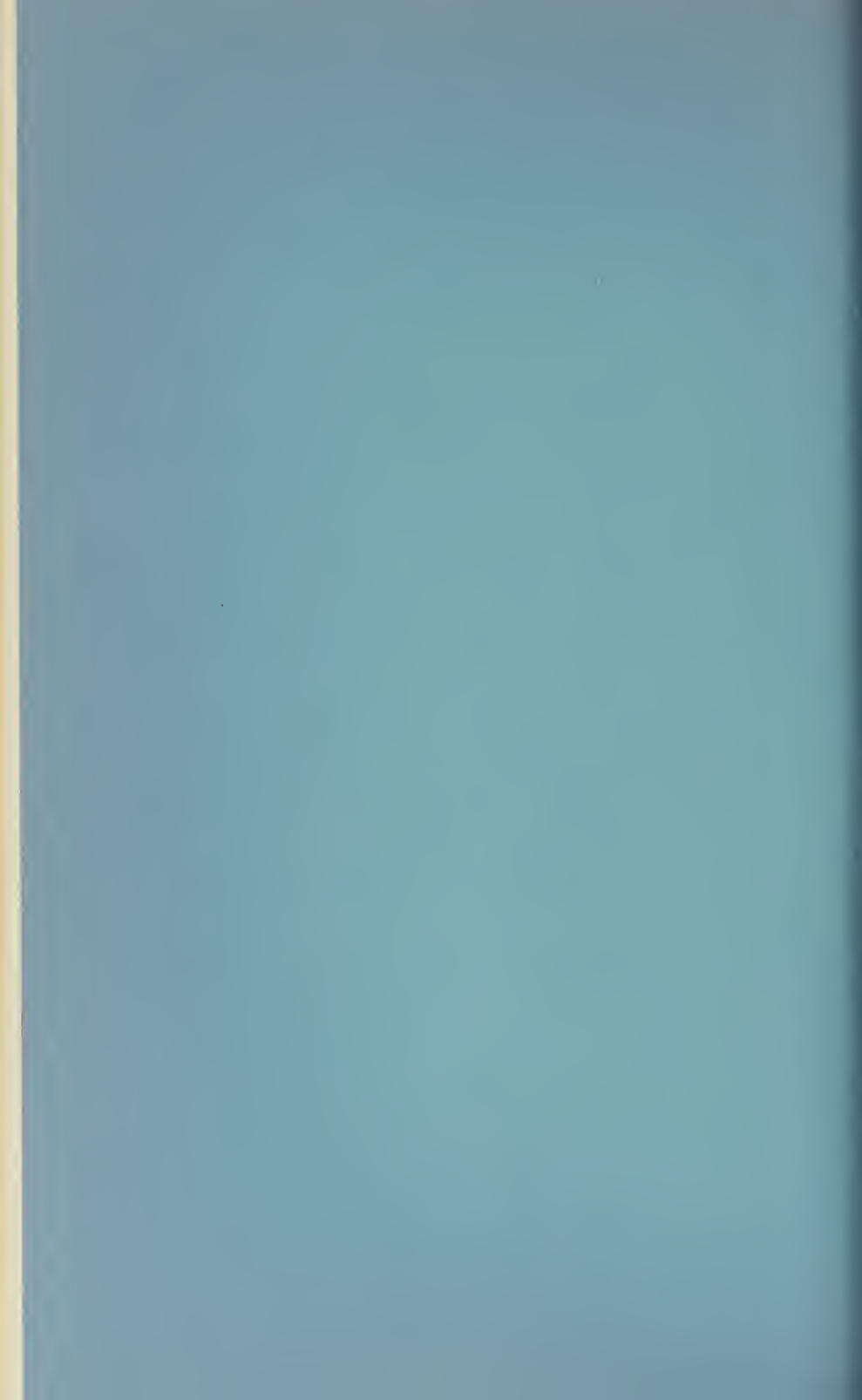
Transcript of Record

Petition for Enforcement of Order of the
National Labor Relations Board

FILED

MAY 17 1963

PAUL R. WOODSON



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GENERAL COUNSEL'S EXHIBIT No. 1-E

United States of America
Before the National Labor Relations Board
Nineteenth Region
Case No. 19-CA-691

In the Matter of HOME DAIRIES COMPANY
and
TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA, LO-
CAL No. 483, AFL.

COMPLAINT

It having been charged by Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 483, AFL, hereinafter referred to as the Union, that Home Dairies Company, hereinafter called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth in the Labor-Management Relations Act of 1947, 61 Stat. 136, hereinafter called the Act, the General Counsel of the National Labor Relations Board, on behalf of such Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

Home Dairies Company is, and at all times material hereto has been, a corporation incorporated under the laws of the State of Idaho, having its prin-

cipal place of business at Nampa, Idaho, engaged in the business of processing and selling dairy products.

II.

In the course of its business as set forth above, Respondent, during the twelve-month period preceding July 1952, made total purchases having a value of approximately \$100,000, of which an amount of \$75,000 was purchased from sources outside the State of Idaho. During the same period, Respondent made sales of products valued at approximately \$100,000. All such sales were shipped directly to customers outside of the State of Idaho.

III.

Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 483, AFL, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2 (5) of the Act.

IV.

The following unit is now, and at all times material herein has been, an appropriate unit within the meaning of Section 9 (b) of the Act:

All inside plant employees, drivers, salesmen, outside drivers, and milk haulers who are employed in Respondent's plants at Nampa and Caldwell, Idaho; excluding managers, assistant managers, superintendents, office and clerical employees, foremen, guards, and special employees.

V.

On or about July 18, 1952, and at all times thereafter, Respondent failed and refused to bargain in

good faith after appropriate demand with the Union as the exclusive representative of all employees in the unit described above with respect to rates of pay, wages, hours of employment or other conditions of employment by, inter alia:

(a) failing and refusing to meet for bargaining purposes with the Union until proof of the Union's claim of majority through an election was furnished by Respondent;

(b) embarking upon a campaign designed to coerce and intimidate its employees with the intention of destroying the Union's majority;

(c) meeting with an organization known as the Employees' Committee and attempting to bargain with it in derogation of the rights guaranteed the employees in Section 7 of the Act; and

(d) granting to its employees a wage increase without bargaining or giving notice to the Union.

VI.

On or about July 18, 1952, and at all times since, Respondent, by its officers, agents, and supervisors, while engaged in the operations described above, has interfered with, restrained, and coerced its employees and is now interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act by, inter alia:

(a) urging, persuading, and coercing their employees by threats of reprisal or promise of benefit to refrain from assisting, becoming, or remaining members of the Union or engaging or continuing to engage in concerted activities for the purpose

of collective bargaining or other mutual aid or protection;

(b) threatening their employees with loss of employment should they authorize the Union to represent them in collective bargaining;

(c) promising wage increases if they should repudiate the Union; and

(d) engaging in interrogation of certain employees about their union affiliation and surveillance of the meetings of the employees with the Union.

VII.

On or about July 18, 1952, Respondent, by its officers and agents, while engaged in the operations described above has dominated and supported the Employees' Committee by inter alia:

(a) causing its employees to select representatives to the Employees' Committee to meet with the Employer for purposes of collective bargaining on behalf of the employees with respect to rates of pay, wages, hours of employment and other condition of employment;

(b) meeting with the representatives so chosen and in engaging in discussion concerning wages, hours, and working conditions; and

(c) questioning the members concerning the demands and desires of the employees as to wages, hours, and working conditions.

VIII.

Employees' Committee is, and at all times herein mentioned has been, a labor organization within the meaning of Section 2 (5) of the Act.

IX.

By the acts described in paragraphs V, VI and VII, and each of them, and for reasons therein set forth, Respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act; and by all of said acts, and each of them, Respondent has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

X.

By the acts described in paragraph V, and by each of them, and for the reasons therein set forth, Respondent did refuse and fail to bargain with the Union as the representative of their employees in the appropriate unit set forth in paragraph IV, above, and thereby has engaged in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

XI.

By the acts described in Paragraph IX, and each of them, Respondent dominated, supported, and assisted the Employees' Committee, thereby interfering with the formation or administration of that labor organization and thereby has engaged in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

XII.

The activities of Respondent, as set forth in paragraphs V, VI, VII, and VIII, above, occurring in connection with the operations of Respondent as described in paragraphs I and II, above, have a

close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIII.

The aforesaid acts of Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) (2) and (5) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 17th day of October, 1952, issues this Complaint against Home Dairies Company, the Respondent herein.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
Region 19.

GENERAL COUNSEL'S EXHIBIT No. 1-G

[Title of Board and Cause.]

ANSWER

Comes now the Home Dairies Company, respondent in the above entitled case, and for its answer to the complaint specifically denies each and every allegation contained therein not hereinafter admitted, qualified or explained.

I.

Respondent admits paragraph I of the complaint,

and with reference to Paragraph II respondent alleges that under the provisions of the Oregon Milk Control Act milk sold or distributed in Oregon must be purchased from producers of the State of Oregon, but in connection with said operation respondent feels that it is entitled to the exemption provided in section 3 of the National Labor Relations Act as a business engaged in an agricultural pursuit and that the employees of the respondent are, therefore, agricultural laborers.

II.

Respondent admits paragraphs III and IV of the complaint but denies paragraph V and the whole thereof, and with reference to sub-paragraph (a) respondent alleges that it has always been willing, and is at the present time willing, to bargain with the duly selected representative of its employees. Respondent denies sub-paragraph (b) but in connection with sub-paragraph (c) admits that respondent had a meeting at the request of an employee committee but at said time and place there was no collective bargaining but a simple request on the part of the committee that the respondent consider certain grievances and complaints which the respondent agreed to do.

With reference to subparagraph (d) of paragraph V the respondent admits that certain necessary wage increases were given to those employees consistent with the Company's ordinary business practices and under the advice of its counsel, said increases having been given after the Union failed to carry a majority in a consent election.

III.

Respondent denies paragraph VI of the complaint and the whole thereof and specifically denies subparagraphs (a), (b), (c) and (d), and as to subparagraph (a) alleges that the statements contained therein are absolutely false and untrue and at no time did respondent make threats of reprisals or promises of benefits to its employees in connection with Union membership or Union activities, and that in connection with the allegations in paragraphs (b), (c) and (d) respondent denies all of said paragraphs and in connection therewith respondent alleges that it was properly advised as to its legal responsibilities in connection with said subparagraphs and at no time did it violate section 7 or any provisions of the Act.

IV.

With reference to paragraph VII, respondent denies that it caused the employees to form a committee or that any committee was chosen at the instance of this respondent for the purpose of engaging in a discussion under collective bargaining, and in connection therewith respondent alleges that certain of its employees volunteered to meet with the Company and to present to the Company certain grievances and requests and that at said meeting the Company had its attorney present but upon the demand of the committee chairman the attorney was excused and the grievances were presented by the committee and the same were taken under consideration.

Respondent denies paragraph VIII and in connection therewith alleges that said committee has not qualified as a labor organization within the meaning of section 2(5) of the Act, nor has said committee to the knowledge of this respondent registered its officers or filed its non-communist affidavits as provided by law. Respondent denies paragraph IX and the whole thereof and denies that it has committed any unfair labor practices under the meaning of section 8(a)(1) or any other section of the Act.

V.

Respondent denies paragraphs X, XI and XII, and with reference to paragraph XII denies that any acts on the part of respondent have led to or would lead to labor disputes, and denies paragraph XIII insofar as said paragraph states that the respondent has been guilty of unfair labor practices.

Wherefore, respondent asks that the complaint in the above entitled action be dismissed.

HOME DAIRIES COMPANY,
/s/ E. A. WESTON,
Attorney.

[Duly Verified.]

[Title of Board and Cause.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Mr. Paul E. Weil, for the General Counsel.

Mr. F. T. Baldwin, of Boise, Idaho, for the Union.

Mr. Eli A. Weston, of Boise, Idaho, for Respondent.

Before: Martin S. Bennett, Trial Examiner.

Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, 61 Stat. 136, herein called the Act, stems from a charge duly filed by Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, herein called the Union, against Home Dairies Company, herein called Respondent. Pursuant to said charge the General Counsel of the National Labor Relations Board issued a complaint dated October 17, 1952, against Respondent, alleging that Respondent had engaged in unfair labor practices within the meaning of Section 8 (a) (1) (2) and (5) of the Act.

Specifically the complaint, as amended, alleged that on and after July 18, 1952, (1) Respondent had refused to bargain in good faith with the Union as the representative of its employees in an appropriate unit; (2) had interfered with, restrained and coerced its employees by threats of reprisal and loss of employment if they engaged in union activities or chose the Union to represent them, by promising wage increases if the employees would repudi-

ate the Union, and by interrogating employees and engaging in surveillance of union meetings; and (3) had dominated and contributed support to a labor organization known as "Employees' Committee" by causing its employees to select representatives to the Employees' Committee and meeting with said representatives to discuss wages, hours, and working conditions. Respondent's answer denied that it had engaged in the conduct attributed to it by the complaint and denied that it had engaged in unfair labor practices.

Pursuant to notice a hearing was held at Nampa, Idaho, on November 3, 1952, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Associate Chief Trial Examiner. The General Counsel and Respondent were represented by counsel and the Union by its representative. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the hearing, the parties were afforded an opportunity to present oral argument and to file briefs and proposed findings and conclusions but waived same.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The business of Respondent

Home Dairies Company is an Idaho corporation whose principal place of business is at Nampa, Idaho, where it is engaged in the business of produc-

ing and selling dairy products. It also maintains an office at Caldwell, Idaho, 7 miles distant, for the same purpose. During the year ending in July of 1952, Respondent sold products valued at approximately \$112,500, of which substantially all was shipped to customers outside the State of Idaho. The undersigned finds that Respondent is engaged in commerce within the meaning of the Act.

The corporate stock of Respondent is owned by 5 persons who also constitute a partnership owning all interest in Woodlawn Dairies, a dairy firm whose place of business is also at Nampa. This latter firm has no plant as such and maintains only a small business office in Nampa. Supervision of both concerns is identical and Woodlawn has but one employee, a driver, who operates a milk route 6 days a week. Woodlawn Dairies owns no processing equipment, but, under an agreement with Respondent, the latter buys, processes, and sells milk to Woodlawn f.o.b. Respondent's Nampa plant. Woodlawn is charged only for the milk, the bottles and cases being owned by Home Dairies which retains title and makes no charge for them. Woodland owns 2 trucks but employs only one driver, the other truck remaining on a stand-by basis. These trucks are maintained by Respondent for Woodlawn on a monthly fee basis. Woodlawn also owns some office equipment which however is utilized by Respondent. Each firm pays the other directly for all services rendered.

In view of the foregoing, the undersigned finds that Home Dairies Company and Woodlawn Dairies

constitute an integrated unitary enterprise and that the two firms constitute a single employer within the meaning of the Act.

II. The labor organization involved

Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, is a labor organization admitting to membership employees of Respondent.

III. The unfair labor practices

A. The appropriate unit and majority representation therein

The complaint alleges and Respondent's answer admits that all inside plant employees, drivers, salesmen, outside drivers, and milk haulers who are employed in Respondent's plants at Nampa and Caldwell, Idaho, excluding managers, assistant managers superintendents, office and clerical employees, foremen, guards, and special employees, constitute a unit appropriate for the purposes of collective bargaining.

As set forth above, Respondent and Woodlawn Dairies are an integrated unitary enterprise. The records warrants a finding that there is a community of interest in the working conditions of the one employee of the latter firm, a driver, and the working conditions of the employees of Respondent in the appropriate unit. Accordingly, he is found to be within said appropriate unit. The undersigned finds therefore that the above-described unit, which includes the one employee of Woodlawn Dairies constitutes a unit appropriate for the purposes of col-

lective bargaining within the meaning of Section 9 (b) of the Act.¹

The parties stipulated that the complement of personnel within the appropriate unit totals 42 in number. The General Counsel contends however, and Respondent disputes, that the one employee of Woodlawn Dairies, driver Norman Stathopoulos, should be included in said complement. Having found the unit urged by the General Counsel to be appropriate, the undersigned further finds that Stathopoulos should be included within the unit, this increasing the unit to 43 in number.

As evidence of its majority, the General Counsel proposed to offer in evidence 23 cards bearing the signatures of employees within the aforesaid appropriate unit. Respondent then stipulated that the signatures, which included that of Stathopoulos, were authentic. Other uncontroverted evidence discloses that 18 of these cards were signed at union meetings on June 18, July 1 and July 9, 1952. The testimony indicates that the remaining 5 cards were signed at a Union meeting on July 24. Under the circumstances, the undersigned finds that on July 24, 1952, and at all times thereafter the Union, by virtue of Section 9 (a) of the Act, has been and now is the duly designated representative of a majority of the employees in the above-described unit for the purposes of collective bargaining.

¹In the alternative, it is found that a unit solely of the employees of Respondent, excluding the one employee of Woodlawn Dairies, is also appropriate. As will appear, the question of majority representation is unaffected by his inclusion or exclusion.

B. Sequence of events

Insofar as the record indicates, the organizational campaign described below was the first attempt by the Union or any other labor organization to organize the employees of Respondent. Initially, two employees of Respondent became dissatisfied with working conditions and were referred to Business Agent Chester Wuelfken of the Union. Wuelfken distributed some union application and designation forms to one of the men and arranged a meeting for June 18, 1952. On that occasion, he met with some of the employees of Respondent at a hall and outlined union principles and explained organizational procedure; five or six applications were signed at that meeting. A second meeting was held on July 1, at which Wuelfken outlined desirable contract provisions to the assemblage. Other signatures were procured on this occasion, making a total of 13 signed cards.

That Respondent was aware of the organizational campaign became apparent on July 1. Jim Muller, a part owner of Respondent and manager of its maintenance department, asked Employee Clyde Clevenger how the meetings were going. Clevenger replied that they were proceeding satisfactorily and Muller stated that he wished to ascertain the cause of the trouble. Clevenger said that the men were not being reimbursed for working overtime; that the drivers assigned to night work, unlike other employees in the concern, did not receive an increase or wage differential; and that the men received no extra pay for working on holidays. Muller replied

that he wished to get to the bottom of the matter and that if Clevenger could ascertain why the men were "insisting they have the union" he would like to know the answer in order to "see if I can iron this out." Muller, who did not recall speaking to Clevenger on this occasion, did not speak to him on the topic again.

On the same day, Muller asked maintenance man Gordon Mills to inspect something in a plant building late in the day and Mills replied that he would not be returning to the plant inasmuch as he had planned to attend the Union meeting that evening. Muller asked Mills to explain the cause of dissatisfaction among the men and Mills replied that there were two main issues, namely the desire of the men for a raise in their hourly rate, or the equivalent thereof, and payment of time and one-half for overtime.

On the following day, Muller asked Mills if he had attended the Union meeting and Mills replied that he had. Muller pointed out that a contract providing for time and one-half for overtime would be too expensive for Respondent. He then stated that Respondent actually needed but one maintenance man; Mills, who was one of the two maintenance men, promptly pointed out that but several days before Muller had informed Mills that he did not know how Respondent could catch up with all the work waiting to be done. Nevertheless Muller stated that "if we have a Union we just can't afford it and we are just going to have to lay off some employees." He

specifically referred to laying off a checker, one Abbie Roe.²

On July 5 or within several days thereafter, Muller took still other action to counteract the union organizational campaign, by forming an independent company union. According to Mills, Muller convened a group of workers in the maintenance department and stated that Respondent would like each department to select a representative to meet with management. And, according to the uncontroverted testimony of employee Clyde Clevenger, Foreman Leonard Cable informed him that a committee was to be formed for the purpose of meeting with the stockholders. Muller admitted that he, together with other representatives of management, decided to hold a meeting with the men and that he had proposed to each division that it select representatives to serve on the committee. The employees promptly acceded to this request and a committee was formed with representatives from all divisions of the company; it later met with management on or about July 18.³

²The findings herein are based upon Mills' forthright testimony which is substantially uncontroverted by Muller. Muller's testimony on other aspects of Mills' testimony is set forth below and was marked by considerable vagueness and absence of recollection.

³Muller testified that Mills suggested the formation of the committee in order to prevent the men from joining the Union. This testimony is somewhat dubious and moreover, even assuming this to be so, the fact still is that Respondent, not Mills proposed this plan to its employees.

On July 9 the Union held a third meeting among the employees of Respondent. It was conducted by Secretary-Treasurer F. T. Baldwin of the Union and about five cards were signed. A similar meeting was held on July 24 at which 5 more cards were signed. On or about July 9, Carroll Lawrence, one of the owners of Respondent, held a conversation with employee Gene Hollenbeck, whose testimony herein is uncontroverted. Hollenbeck explained to Lawrence that he had not been instrumental in introducing the Union to the plant. After some further discussion, Lawrence referred to an employee, Williamson, who was, according to Lawrence, a slow worker; Lawrence then stated that "if they went Union" he did not see how he could "keep a man on and pay him time and a half for the extra work." Lawrence also stated that he had been giving another employee, Abbie Roe, "a break" by keeping him on despite his poor vision and that "the Union would hang on to these men."

On or about July 15, the first contact of management by the Union took place when Secretary-Treasurer Baldwin telephoned Little relative to certain threats allegedly made to the men. At about this time, the Union requested the Idaho Department of Labor to conduct a representation election among the employees of Respondent. And on July 16, the Commissioner of Labor for the State wrote to Respondent and announced that such an election would be conducted on July 18. Respondent was specifically asked to "designate some official of your Company to act as an observer for the Employer. We will

permit the Union to have present one observer." Apparently Respondent did not agree to the holding of the election on July 18 and it was cancelled. The parties later agreed to hold an election on July 26, after the Union threatened to strike.

On or about July 18, at the request of Muller, the Employees' Committee held a meeting with management. Present for Respondent were Muller, Carroll Lawrence, Ralph Little, secretary-treasurer and co-owner of Respondent, and Respondent's counsel, Eli Weston. Gordon Mills, who was selected by the employees as chairman of the Committee, objected at the outset of the meeting to the fact that Respondent had legal counsel present and that the Committee did not; he stated that the employees did not wish Weston to participate in the discussion. Weston promptly excused himself and left. The meeting then commenced with Mills as the spokesman for the Committee and all three representatives of management participating.

The discussion promptly turned to a consideration of what the men wanted to have in a contract; this appears to have been primarily an improvement in hours and time and one-half for overtime work. The management representatives stated that they could not afford to pay more money. Little then stated that it was unlawful to bargain with the Committee while the plant was being organized by the Union but that, according to Mills, "after this is all washed aside we can make some adjustments." Similar language was attributed to Little by Hollenbeck. Muller stated that Respondent was

contemplating abandoning its route to Cascade on the ground that it was not profitable. It is noteworthy that this route was largely a summer route and that this meeting took place in mid-July. It would follow, if Respondent did have any bona fide plans with respect to elimination of this route, that such plans were directed to the future and did not create a current issue. This was the first time the topic was raised with the employees and the choice of this occasion is significant. To the undersigned, the raising of the issue at that time is indicative of Respondent's bad faith. The meeting ended on this note and, will appear, significant improvements in working conditions were made almost immediately after the Union lost the State election on July 26.⁴

On July 18, Secretary-Treasurer Baldwin of the Union officially wrote to Respondent, announced that it represented a majority of its employees in the unit heretofore found to be appropriate, and asked Respondent to meet with the Union and negotiate terms of employment. On July 23, Ralph Little replied to Baldwin and acknowledged receipt of the July 18 demand. Little stated that, prior to recognition, Respondent desired to have the question of majority determined by an election and offered to

⁴ Findings herein are based upon the credited testimony of Mills and Hollenbeck. Muller's testimony concerning the meeting was extremely vague and unimpressive as to details. Little supported Mills' version of events leading up to and during the meeting but denied making the last quoted statement attributed to him by Mills; his denial is not credited.

consent to same. The Union did file a representation petition with the Board on July 21 but it was later withdrawn on August 1. On July 24, the Union held a fourth meeting and voted to strike if Respondent did not consent to an election. This position was conveyed to Respondent's counsel on July 25 by the Union; the consent was forthcoming and an election was agreed to for July 26.

A representative of the State Commissioner of Labor, appeared at the plant and held an election on July 26. He permitted one observer to be present for the Union, Baldwin its secretary-treasurer. And, pursuant to the letter asking Respondent to designate one of its officials as an observer, Ralph Little, co-owner and secretary-treasurer, served as observer. The Union lost the election 23 to 17.

It will be recalled that at the meeting with the Committee on or about July 18 Little informed the Committee that after matters were adjusted Respondent would "make some adjustments." And, shortly before the election, James Muller held a significant conversation with Hollenbeck. After ascertaining from Hollenbeck that the men were dissatisfied because of the overtime they were required to put in on the job, Muller replied that he "thought they would try to work out something for the fellows, they had been planning on it . . . to make up the difference on that overtime." As stated, the Union lost the election on July 26. Respondent within five days instituted a wage increase of \$5 per month for all of its employees, effective August 1. This was first reflected in the pay check of August

17 covering the pay roll period of August 1 through 15. At the same time, Hollenbeck's hours and route were reduced despite the increase in his monthly salary.

C. Conclusions

1. The 8 (a) (1) and (2) allegations.

The Union commenced its organizational campaign in June and held its first meeting on June 18. Although no contact was made with management until mid-June, Respondent promptly and understandably became aware of this activity in its plants. Thus, as early as July 1, Manager Jim Muller interrogated Clevenger concerning the progress of the union organizational campaign, asking him to ascertain why the men insisted on having a union, and stated that he wished to "iron out" the difficulty. As demonstrated, Respondent soon took steps to completely by-pass the Union.

On July 2, having been informed on July 1 by Employee Mills that he was attending the July 1 union meeting, Muller informed Mills, a maintenance man, that operation under a union contract would prove to be expensive and that Respondent might have to operate with but one of their maintenance men; this statement overlooked the fact, as Mills promptly informed him, that Muller but several days earlier had commented on the difficulty of catching up with all the work that was to be done. Muller also raised the possibility of the layoff of another employee, a checker. There was no contention by Respondent that it was faced by an economic crisis requiring a reduction in force. Nor is there

any evidence that Respondent had considered discharging these employees prior to the advent of the Union. The undersigned finds therefore that Respondent's statements herein to Clevenger and Mills constituted interrogation of employees and an attempt to coerce its employees by fear of economic reprisals if the Union succeeded in organizing them.

A similar pattern was followed by Co-owner Lawrence, who informed Employee Hollenbeck on July 9 that if the plant "went union" he would have to eliminate a named employee. Lawrence further stated that another named employee had been retained by Respondent despite his poor vision, thus implying that the employee might find his position less secure if the Union organized the plant. Here, too, there is no evidence that elimination of this employee had been contemplated prior to the advent of the Union. The undersigned finds that this statement was also calculated to and inevitably did coerce the employees of the Respondent.

Muller's desire to "iron out" matters took concrete form on July 5 when, in the face of the union organizational campaign, he proposed that the employees form a company union. The employees promptly complied with this request and an employees' committee was formed with representation from all departments.

On July 15, the Union protested to Secretary-Treasurer Little concerning the interrogation of employees. And, on or about the morning of July 16, Respondent was on notice that the State Commission of Labor proposed to conduct an election

among the employees on July 18. Accordingly, on July 18, the Employees' Committee was convened at the request of Muller. He raised the possibility of abandoning one milk route, clearly a threat to the tenure of the driver thereon, and Little informed the assemblage that while Respondent could not bargain with the committee while the plant was being organized, "after this is all washed up we can make some adjustments." These statements by Muller and Little constituted both a threat of reprisal and a promise of benefit, tending to coerce the employees in their choice of a bargaining representative. The Union lost the election held on July 26, at which Secretary-Treasurer Little of Respondent was an observer. Pursuant to Respondent's promise, the employees were promptly granted a wage increase but 5 days later on August 1; furthermore, at least in the case of Hollenbeck, a salaried employee, his work and hours of work were reduced respite his pay increase.

As found, Respondent, on learning of the union organizational campaign, embarked upon a campaign of interrogation and threats of reprisal to the employees if they selected the Union as their representative. Then, in a patent attempt to undermine the union organizational campaign, Respondent proposed the formation of an independent employees' committee, which the undersigned finds constituted a labor organization, to discuss labor relations. *Wrought Iron Range Co.*, 77 NLRB 487.

This committee, referred to herein as Employees' Committee was convened by Respondent on July

18, after Respondent had initially refused to agree to an election and the question of union recognition was still imminent, and the employees were promised improvements in working conditions after the union organizational campaign was disposed of. And a promise of improved working conditions was made shortly before the election to Hollenbeck by Muller. Some days thereafter the employees voted against the Union by a narrow margin in an election at which a company owner improperly served as an observer. Then, true to its promise, Respondent some days later granted a plant-wide wage increase, and improved working conditions for at least one employee. The evidence is uncontroverted that the wage increase was given solely as a result of the promise given to the Employees' Committee just prior to the election that elimination of the Union from the plant would be suitably rewarded by management. Nor does it make any difference that the wage increase may have been given pursuant to advice that such a procedure was proper after the election. The fact is that the wage increase was promised to the men as an inducement for repudiating the Union, and it is accordingly tainted by this improper motivation.

The undersigned finds that by the foregoing Respondent has dominated and interfered with the formation and administration of a labor organization within the meaning of Section 8 (a) (2) of the Act. This conduct and the other conduct hereinabove found to have been unlawful also constitute interference with, restraint, and coercion of em-

ployees within the meaning of Section 8 (a) (1) of the Act.

2. The 8 (a) (5).

Initially, as to the State election, it may be noted that a State agency cannot usurp the functions of the Board in determining the question concerning the representation of the employees of an employer engaged in commerce. *Thayer Co.*, 99 NLRB No. 65. And while an election by a State agency may, in some circumstances, be an indication of the choice of the employees, such weight may not be attached to it where the clinical conditions uniformly required by the Board have not been followed. It is well established that the Board will not permit a representative of management, and here the facts show that the representative was a co-owner, to serve as an observer at an election. The Board will set aside an election conducted under such circumstances. *Burrows and Sanborn*, 84 NLRB 304; *Parkway Sales, Inc.*, 84 NLRB 475; and *Ann Arbor Press*, 88 NLRB 391. It has felt that the presence of such representatives would inevitably have a restraining influence on the freedom of expression of the employees involved and thus destroy the desired laboratory atmosphere for representation elections. And, in any event, the other unfair labor practices described herein would vitiate even a Board election held in this context. Accordingly, the undersigned will not assign any weight herein to the foregoing election and its results.

It has been found that the Union first acquired a majority representation among the employees of

Respondent on July 24. It will be recalled that the initial request for recognition, dated July 18, asked Respondent to bargain concerning working conditions. Respondent, on July 23, wrote to the Union for the first time. This letter, sent from Nampa to the Union office at Boise was presumably delivered on July 24 or 25; it stated that Respondent desired to have the majority question determined by an election. The record is not clear as to whether this letter was before the Union on July 24 when, at a union meeting, it voted to strike on July 26 if Respondent did not consent to an election; the fact that Respondent had on or about July 16 refused to agree to the proposal of the State Labor Commissioner to hold an election on July 18 no doubt played a part in this latter decision. In any event, Secretary-Treasurer Baldwin of the Union telephoned Respondent's counsel on July 25 and informed him that the membership would strike on July 26 unless Respondent agreed to an election. The counsel, Eli Weston, returned the call shortly thereafter and agreed to an election on July 26.

The undersigned is of the belief that the Union, in pressing for an election on July 25, was renewing the request for recognition which Respondent had in effect previously refused to grant absent an election. For originally, the Union had desired recognition presumably with or without a card check; Respondent had in effect refused and proposed an election; and the Union had pressed for the election which Respondent agreed to on July 25. It is apparent that, commencing on July 18 and con-

tinuing thereafter, the Union was primarily interested in recognition and that its consent to the election initially proposed by Respondent did not constitute any alteration of that position. The undersigned finds, therefore, that the demand by the Union on July 25 for the holding of an election was in effect a restatement of its initial request for recognition.

The record discloses that Respondent then unilaterally instituted improvements in working conditions on August 1, but 5 days after the election. This was, however, tainted by the promise made shortly before the election that elimination of the Union would result in an improvement in working conditions. This wage increase is therefore colored by the unlawful motivation that brought it into being and it constitutes evidence of a rejection of the collective bargaining principle. For when the matter is boiled down to bare essentials, Respondent promised employees benefits for rejecting the Union and then delivered such benefits pursuant to its promise.

It is correct that an employer can withhold recognition from a labor organization possessed of a majority and require it to demonstrate its majority through an election where the employer's position is one taken in good faith. Where, however, the refusal to grant recognition is predicated on a desire to utilize the intervening period to disrupt the Union's majority, such refusal is not justified and constitutes a violation of the duty to bargain. *Joy Silk Mills, Inc., vs. N.L.R.B.*, 185 F. 2d 732

(C. A. D. C.) cert. den. 341 U. S. 914; N.L.R.B. vs. Van Kleeck, 189 F. 2d 516 (C. A. 2); and N.L.R.B. vs. Consolidated Machine Tool Corp., 163 F. 2d 376 (C. A. 2) cert. den. 332 U. S. 824.

The fact is that Respondent, upon hearing of the union activities, embarked on a campaign on or about July 1 calculated to coerce the employees to refrain from selecting a collective bargaining representative. It promptly formed a labor organization in the guise of an employee committee; promised improved working conditions in return for elimination of the Union; and upon elimination of the Union, did promptly give employees a wage increase. This demonstrates that Respondent's proposal of and assent to the election were not motivated by a bona fide doubt as to the Union's majority and, under the circumstances, the State election following upon these unfair labor practices calculated to coerce employees in the selection of a bargaining representative and conducted under improper conditions, cannot be of avail to Respondent. See *Franks Bros. vs. N.L.R.B.*, 321 U. S. 702.

That Respondent may have received advice that it was permissible to grant these wage increases under the circumstances, does not serve to refute the preponderance of the evidence that these wage increases were unlawfully motivated. These increases were intended by Respondent as its reply to the Union's desire to bargain collectively. Under the circumstances, the undersigned finds that on and after August 1, 1952, Respondent had refused to bargain collectively with the Union as the collective

bargaining representative of its employees, thereby violating Section 8 (a) (5) and 8 (a) (1) of the Act. *N.L.R.B. vs. W. T. Grant Co.*, . . F. 2d . . (C. A. 9), decided November 10, 1952.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in Section III above, occurring in connection with its business operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

In the view of the undersigned, the unfair labor practices found above warrant an inference that the commission of other unfair labor practices may be anticipated in the future. It will therefore be recommended that Respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act.

Upon the basis of the foregoing finding of fact, and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Respondent's inside plant employees, drivers, salesmen, outside drivers, and milk haulers, excluding managers, assistant managers, superintendents, office and clerical employees, foremen, guards, and special employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁵

3. Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, was on July 24, 1952, and now is, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on August 1, 1952, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor prac-

⁵This unit of course includes the driver for Woodlawn Dairies.

tices within the meaning of Section 8 (a) (1) of the Act.

6. By dominating and interfering with the formation and administration of a labor organization, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Respondent, Home Dairies Company, Nampa and Caldwell, Idaho, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, as the exclusive representative of its inside plant employees, drivers, salesmen, outside drivers, and milk haulers, excluding managers, assistant managers, superintendents, office and clerical employees, foremen, guards, and special employees;

(b) Dominating or interfering with the formation and administration of Employees' Committee or any other labor organization;

(c) Recognizing the Employees' Committee, or any successor thereto as the representative of its employees for the purpose of dealing with it con-

cerning grievances, wages, rates of pay, hours of employment, or any other conditions of employment;

(d) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, as the exclusive representative of all employees in the above-described appropriate unit, with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a written agreement;

(b) Disestablish and withdraw all recognition from Employees' Committee as the representative of its employees for the purpose of dealing with Respondent concerning grievances, wages, rates of

pay, hours of employment, or any other conditions of employment;

(c) Post at its places of business at Nampa and Caldwell, Idaho, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being signed by a representative of Respondent, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps it has taken to comply herewith.

It is also recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order Respondent notifies the aforesaid Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the aforesaid action.

Dated this 15th day of December, 1952.

/s/ MARTIN S. BENNETT,
Trial Examiner.

APPENDIX A

Notice to all employees pursuant to the recommendations of a trial examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will bargain collectively, upon request, with Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, as the exclusive representative of our employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All inside plant employees, drivers, salesmen, outside drivers, and milk haulers, excluding managers, assistant managers, superintendents, office and clerical employees, foremen, guards, and special employees.

We Will disestablish and withdraw all recognition from Employees' Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances, wages, rates of pay, hours of employment, or other conditions of employment.

We Will Not dominate or interfere with the formation or administration of Employees' Committee or any other labor organization.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All of our employees are free to become or remain members of the above-named union or of any other labor organization.

Dated.....

HOME DAIRIES COMPANY,
(Employer)

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

EXCEPTIONS

The respondent in the above entitled case files herewith Exceptions and Brief to the Intermediate Report and Recommended Order upon the following grounds to wit:

I.

There is no evidence in the record to sustain a finding that the Union had been voluntarily elected as the representative of the majority of the respondent's employees.

II.

The evidence fails to support the conclusion that the respondent engaged in any unfair labor practices or any program designed to interfere with its employees in their right to join or not to join the Union.

III.

There is no evidence in the record to support the conclusion that the respondent established a company dominated committee.

IV.

There is no evidence in the record to support the conclusion that the election was consented to upon a threat of strike.

V.

The record fails to support the conclusion that wage and salary increases were made for the purpose of interfering with the Union's activities.

VI.

The record clearly shows and establishes the fact that the Union decided that the question of representation was to be established through an election among respondent's employees to be conducted by the Commissioner of Labor of the State of Idaho.

* * * * *

Respectfully submitted,

HOME DAIRIES COMPANY
/s/ ELI A. WESTON,
Attorney for Respondent.
Residence: Boise, Idaho.

United States of America
Before the National Labor Relations Board
Case No. 19-CA-691

In the Matter of HOME DAIRIES COMPANY
and
TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,
LOCAL No. 483, AFL

DECISION AND ORDER

On December 15, 1952, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent has engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirma-

tive action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications and exceptions set forth below.

As set forth in detail in the Intermediate Report, the Union first claimed recognition as bargaining agent on July 18, before it had acquired a majority. The Respondent replied on July 23, and said that it desired to have the question of representation determined by an election. The Union achieved majority status for the first time on July 24, when the members decided to strike unless the Respondent agreed to an election. The following day the Union and the Respondent agreed to a State-conducted election, which took place on July 26, and which the Union lost. It does not appear that after acquiring a majority the Union made any demand upon the Employer other than the request for a consent election.

The Trial Examiner found that, although the Union did not represent a majority of the employees until after the Respondent had already refused to

grant exclusive recognition, the Respondent nevertheless violated Section 8 (a) (5) of the Act, as alleged in the complaint. We do not agree. As the Board has frequently held, an unequivocal demand for recognition at a time when the union has a majority in an appropriate unit is a prerequisite to a finding that there was an unlawful refusal to bargain.¹ It is true that by other conduct—including interrogations, promises of benefit, and establishment of an employee committee to supplant the Union—the Respondent unlawfully coerced and intimidated its employees and thereby interfered with the Union's organizational activity. It does not follow, however, that the Respondent's various violations of Section 8 (a) (1) and (2) of the Act, all of which occurred before the Union had reached its majority, can be deemed also to constitute a violation of Section 8 (a) (5).

Accordingly, as neither a demand nor a refusal were proved at a time when the Union in fact represented a majority, we find that the record does not support the complaint allegation of refusal to bargain, and we shall therefore dismiss the complaint insofar as it alleges a violation of Section 8 (a) (5) of the Act.²

Order

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations

¹ Wafford Cabinet Company, 95 NLRB 1407.

² Sam Zall Milling Company, 94 NLRB 749, Reversed, 31 LRRM 2514 (C.A. 9), March 17, 1953.

Act, the National Labor Relations Board hereby orders that Respondent, Home Dairies Company, Nampa and Caldwell, Idaho, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation and administration of Employees' Committee or any other labor organization;

(b) Recognizing the Employees' Committee, or any successor thereto as the representative of its employees for the purpose of dealing with it concerning grievances, wages, rates of pay, hours of employment, or any other conditions of employment;

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized by Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Disestablish and withdraw all recognition from Employees' Committee as the representative of its employees for the purpose of dealing with Respondent concerning grievances, wages, rates of pay, hours of employment, or any other conditions of employment;

(b) Post at its places of business at Nampa and Caldwell, Idaho, copies of the notice attached hereto and marked Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being signed by a representative of Respondent, be posted immediately upon receipt thereof and maintained for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the date of this Order what steps it has taken to comply herewith.

3. It Is Further Ordered that the complaint be, and it hereby is dismissed insofar as it alleges that

³In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order" the words "A Decree of the United States Court of Appeals enforcing."

the Respondent violated Section 8 (a) (5) of the Act.

Signed at Washington, D. C., June 3, 1953.

PAUL M. HERZOG, Chairman,
JOHN M. HOUSTON, Member,
PAUL L. STYLES, Member,
ABE MURDOCK, Member,
IVAR H. PETERSON, Member.

[Seal] NATIONAL LABOR RELATIONS
BOARD.

APPENDIX A

Notice to all employees pursuant to a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will disestablish and withdraw all recognition from Employees' Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances, wages, rates of pay, hours of employment, or other conditions of employment.

We Will Not dominate or interfere with the formation or administration of Employees' Committee or any other labor organization.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organi-

zations, to join or assist Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All of our employees are free to become or remain members of the above-named union or of any other labor organization.

HOME DAIRIES COMPANY,
(Employer)

By.....
(Representative) (Title)

Dated.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HOME DAIRIES COMPANY,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, “In the Matter of Home Dairies Company and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL,” the same being known as Case No. 19-CA-691 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Martin S. Bennett Trial Examiner for the National Labor Relations Board issued November 3, 1952.

(2) Stenographic transcript of testimony taken before Trial Examiner Martin S. Bennett on November 3, 1952, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Martin S. Bennett's Intermediate Report and Recommended Order dated December 15, 1952 (annexed to item 7 hereof); order transferring case to the Board, dated December 15, 1952, together with affidavit of service and United States Post Office return receipts thereof.

(4) Respondent's letter dated December 22, 1952, requesting extension of time to file Exceptions and Brief.

(5) Copy of Board's telegram dated December 29, 1952, granting all parties extension of time to file Exceptions and Briefs.

(6) Respondent Company's Exceptions to the Intermediate Report received January 15, 1953.

(7) Copy of Decision and Order issued by the National Labor Relations Board on June 3, 1953, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor

Relations Board in the city of Washington, District of Columbia, this 22nd day of September, 1953.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 14039. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Home Dairies Company, Respondent. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed: September 24, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14039

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HOME DAIRIES COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Home Dairies Company, Nampa and Caldwell, Idaho, its officers, agents, successors, and assigns. The proceeding resulting in said Order is known upon the records of the Board as "In the Matter of Home Dairies Company and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, AFL.," Case No. 19-CA-691. In support of this petition the Board respectfully shows:

(1) Respondent is an Idaho Corporation engaged in business in the State of Idaho, within this judi-

cial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on June 3, 1953, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, Home Dairies Company, Nampa and Caldwell, Idaho, its officers, agents, successors, and assigns. On the same date, June 3, 1953, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which

relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

Dated at Washington, D. C., this 16th day of September, 1953.

NATIONAL LABOR RELATIONS
BOARD

/s/ By A. NORMAN SOMERS,
Assistant General Counsel.

[Endorsed]: Filed September 18, 1953. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In this proceeding, petitioner National Labor Relations Board will urge and rely upon the following points:

1. Substantial evidence on the record considered as a whole supports the Board's finding that respondent violated Section 8 (a) (1) of the Act by interrogating its employees, threatening reprisal, promising benefits, and granting a wage increase to thwart the employees concerted activity.

2. Substantial evidence on the record considered as a whole supports the Board's finding that respondent violated Section 8 (a) (2) and (1) of the Act by dominating and interfering with the forma-

tion and administration of the Employees' Committee.

Dated at Washington, D. C., this 22nd day of September, 1953.

Respectfully submitted,

/s/ A. NORMAN SOMERS,

Assistant General Counsel, National
Labor Relations Board.

[Endorsed]: Filed September 25, 1953. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ANSWER

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Comes now the Home Dairies Company, Respondent in the above entitled action, and for its Answer to the Petition for Enforcement denies each and every allegation contained therein except as hereinafter admitted, qualified or explained.

I.

Respondent admits that it is an Idaho corporation engaged in business in the State of Idaho within the judicial circuit of this Court and therefore under its jurisdiction and Respondent admits that a proceeding was held before the Board and that the Board's Decision and Order was duly served upon Respondent as stated in paragraph (2) of the Petition.

II.

Respondent denies that it has violated Sections 8(a)(1) or 8(a)(2) of the Act and specifically denies that it has interfered with, restrained or coerced its employees in the exercise of their rights under the Act. Respondent states that any statements made to, or conversation with, its employees did not interfere with the employees' rights to join or not to join a labor organization and that any statements made by the Respondent were expressions of opinion and contained no threats or promises whatsoever.

III.

Respondent states that pursuant to a voluntary agreement made and entered into by and between the Respondent and the representative of the union, the union agreed to an election to be conducted by the Commissioner of Labor for the State of Idaho. The election was conducted and the union failed to receive a majority of the votes and this Respondent was then and there informed that the matter was disposed of for a period of one year, but in spite of said election, and contrary to the agreement for the same, the Board conducted the hearing referred to in Paragraph (2) of the Petitioner's Petition, and contrary to the agreement between the parties, and in direct violation thereof, issued an Order ordering the Respondent to bargain with the union.

IV.

Respondent further alleges that the union at no time legally represented a majority of the Respondent's employees.

Wherefore, Respondent asks that the Petition in the above entitled action be dismissed.

Dated at Boise, Idaho, this 6th day of October, 1953.

HOME DAIRIES COMPANY

/s/ By E. A. WESTON,

Attorney for Respondent.

[Endorsed]: Filed October 12, 1953. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Nineteenth Region

Case No. 19-CA-691

In the Matter of HOME DAIRIES COMPANY,
and
TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,
LOCAL No. 483, A.F.L.

TRANSCRIPT OF TESTIMONY

Civil Service Room, U. S. Post Office Building,
Nampa, Idaho, Monday, November 3, 1952.

Pursuant to notice, the above-entitled matter came on for hearing at 10 o'clock, a.m.

Before Martin S. Bennett, Esq., Trial Examiner.

Appearances: Paul E. Weil, Esq., 407 U. S. Courthouse, Seattle, Washington, appearing on behalf of the National Labor Relations Board. F. T.

Baldwin, Secretary, 613 Idaho Street, Room 201, Boise, Idaho, appearing on behalf of the Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 483, A.F.L., the Petitioner. Eli A. Weston, Esq., Box 1922, Boise, Idaho, appearing on behalf of the Home Dairies Company, the Respondent. [1*]

* * * * *

Mr. Weil: Mr. Examiner, I move at this time to amend the complaint in the following particulars:

Between paragraph IV and paragraph V, the following paragraph is to be inserted:

“On or about July 18, 1952, and at all times since the union has been the exclusive bargaining representative of the employees in the unit described above in paragraph IV, within the meaning of Section 9 (a) of the Act.”

In paragraph X—

Trial Examiner Bennett (interrupting): Do you have a number for that?

Mr. Weil: We will number that IV (a), I think that will be easier.

Trial Examiner Bennett: All right.

Mr. Weil: In paragraph X, the first phrase, after the words “paragraph V,” insert the numbers “VI” and “VII.”

Trial Examiner Bennett: So it will read “V, VI, and VII”?

Mr. Weil: That is right.

In paragraph XII, the phrase, “as set forth in

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

paragraphs V, VI, VII, and VIII," should be amended to "as set forth in paragraphs V, VI, and VII," paragraph VIII being the descriptive paragraph. [6]

Trial Examiner Bennett: Is that the extent of the motion?

Mr. Weil: I further wish to — Mr. Weston, would you like to move yourself to amend this answer to Section 1?

Trial Examiner Bennett: You mean move to have the answer extend to the complaint as amended?

Mr. Weil: No. There is a typographical error in paragraph I of the answer, "Section 3" should read "Section 2".

Mr. Weston: I will wait until you get through with yours. I have two or three other ones.

Trial Examiner Bennett: Does the respondent have any objection?

Mr. Weston: The respondent has no objection, if the answer will constitute a general denial to these amendments, any answer will be consistent to these amendments, unless it is understood that we deny each of the amendments as made. Otherwise, no objection.

Trial Examiner Bennett: All right, the motion is granted with that understanding.

Mr. Weston: The respondent would like to ask to amend its answer by inserting in paragraph I after the word "section" in the sixth line, the words "sub-paragraph 3 of Section 2."

Trial Examiner Bennett: So that will read "2 (3)?"

Mr. Weston: Right.

Trial Examiner Bennett: Is that the extent of the motion?

Mr. Weston: Yes, sir. [7]

Trial Examiner Bennett: Any objection?

Mr. Weil: No, sir.

Trial Examiner Bennett: The motion is granted.

Mr. Weil: I wish to propose a stipulation as to commerce to read as follows:

"In the course of its business respondent during the twelve-month period preceding July 1952, made total purchases having a value of approximately \$750,000, of which an amount of approximately \$112,500 was purchased from sources outside the State of Idaho; during the same period respondent made sales of products valued at approximately \$112,500, all of which sales were shipped directly to customers outside the State of Idaho."

That is all.

Mr. Weston: That is agreeable to us.

Trial Examiner Bennett: So stipulated.

Mr. Weil: Will counsel stipulate that the employees in the instant affair are not agricultural laborers?

Mr. Weston: Yes, we will stipulate that.

Mr. Weil: I wish to call at this time Mr. Wuelfken.

CHESTER ARNOLD WUELFKEN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Would you give us your name and your address?

A. My name is Chester Arnold Wuelfken. I live at 313 Everett [8] street, Caldwell.

Q. What is your occupation, Mr. Wuelfken?

A. I am business agent for the Teamsters Local 483 in Boise, Idaho.

Q. In the course of your duties as business agent, have you had any contact with employees of Home Dairies Company? A. Yes, I have.

Q. What was your first contact with the employees of Home Dairies?

A. I received two names of employees who were looking for me with the idea of organizing the place, the Home Dairies Company, I should say.

Q. (By Trial Examiner Bennett): When was this?

A. It was in the first half of June, somewhere between the 6th and the 16th. I don't know the exact date.

Q. (By Mr. Weil): Who were the two individuals?

A. Gene Hollenbeck and Sherman Clay were the two names that I received.

Q. Did you subsequently contact either one of these gentlemen?

(Testimony of Chester Arnold Wuelfken.)

A. Yes. I believe it was on the 12th of June, at least the second Thursday, I am not sure of the exact date. I saw Sherman Clay at that time.

Q. Did you make any arrangements with Mr. Clay?

A. Yes. I told him that if the——

Q. (By Mr. Weston—interrupting): His name is Call—— [9]

A. (Interrupting): That is right, it is Sherman Call. Pardon me.

Q. (By Trial Examiner Bennett): How is it spelled? A. C-a-l-l, I believe.

I told him that the union would make arrangements to have a hall so that we could have a meeting with the employees of the company if they so desired, and he said that they would like to have that meeting, and so the arrangements were for myself to get the hall and then contact Mr. Call so that he could notify the other fellows of the time the meeting would be held. That was the 18th of June, I believe, that they called for it.

Q. (By Mr. Weil): Did you hold a meeting on the 18th of June?

A. Yes, at the Nampa Labor Temple at 8 o'clock. That was on, I believe, it was Wednesday, Wednesday, the 18th.

Trial Examiner Bennett: Don't look at anything unless counsel asks you to.

The Witness: I am sorry.

Q. (By Mr. Weil): Tell us what transpired at this meeting, if you will, as much as you remember?

(Testimony of Chester Arnold Wuelfken.)

A. Well, at the first meeting Sherman Call wasn't there, the other fellows that were there told me that he had already quit the job and left, although he had notified them of the meeting, so at the first meeting I outlined the procedures of organization and gave a general talk on the union principles and what we would have to do to organize the Home Dairies. They asked various [10] questions on organization and along that general line, and then toward the close of the meeting I passed out the applications with the bargaining authorizations on the bottom to be signed, and one of the gentlemen at the meeting came forward and said that he couldn't sign at that time because he was a foreman at the Caldwell plant. I don't remember his exact name. His first name, I believe, was Roy. I can give a good description of him, if you would like it.

Q. (By Trial Examiner Bennett): In other words, the other people were people from the Nampa plant?

A. Yes, the other employees were from the Nampa plant and the other one from Caldwell was there, he was a supervisor, until that time I didn't know him——

Q. (Interrupting): You have answered the question.

Q. (By Mr. Weil): You distributed these application blanks. Were any of them signed at this meeting?

(Testimony of Chester Arnold Wuelfken.)

A. Yes. I believe there were five or six signed at that meeting.

Q. What did you do with these application blanks?

A. I filed them in a folder down at the Boise office.

Q. Who is in charge of the Boise office, who would have charge of that folder?

A. Well, the secretary, Frank Baldwin, would have charge of it.

Q. While you were organizing these men, did you have any further meetings after the meeting of the 18th? [11]

A. Yes. I set up another meeting with them for, I believe July 1, at the Nampa Labor Temple, which was also at 8 o'clock.

Q. Could you tell us if you remember what happened at that meeting?

A. Well, there was a larger group in attendance at the second meeting, and they wanted besides the general information on how to organize, they wanted to know various things about contracts we had negotiated with other creameries in the area, and how close we could come to those various contracts we already held in negotiating one for them, and toward the end of the meeting we filled out applications for the men who had previously, I should say, hadn't been in attendance previously. There was 13 at the end of that meeting, that had signed up.

(Testimony of Chester Arnold Wuelfken.)

Q. (By Trial Examiner Bennett): Thirteen additional?

A. No, 13 altogether, I believe. Approximately seven at that meeting signed up, that would be a total of 13 at that time.

Q. (By Mr. Weil): Those additional applications, what did you do with them?

A. I filed them with the first applications in the Boise office.

Q. Did you at any time contact the management of the company?

A. No. Not at that time.

Q. Did you at a later time?

A. I don't believe that I ever contacted the management.

Q. Did you have any further meetings, after the meeting of the first? [12]

A. Yes. I set up two further meetings, one for, I believe, it was the 9th of July, and then a special meeting I set up for, I believe, it was the 24th of July, and both of those were also in the Nampa Labor Temple.

* * * * *

Cross-Examination

Q. (By Mr. Weston): How did you get your first notice from some employees at the Home Dairies that they wanted to organize?

A. Through the Boise office, I was handed a slip by the secretary with the two names on it.

Q. Did you get it through the mail or did Mr. Baldwin call you?

(Testimony of Chester Arnold Wuelfken.)

A. I was in the office at that time.

Q. What did Baldwin tell you then? [13]

A. He told me there were a couple of fellows who wanted to contact the business agent of the union to be organized, with the idea in mind of organizing the company.

Q. Did he hand you a slip with two names on it?

A. Yes, sir, a small slip of paper with two names on it.

Q. Was that Mr. Baldwin's handwriting or was the slip signed by the employees?

A. No, that was Mr. Baldwin's handwriting on the slip of paper at that time.

Q. Did Mr. Baldwin tell you how he first got notice that the employees wanted to organize at Home Dairies?

A. I think it come over the telephone, but I don't remember who he told me phoned it in.

Q. Isn't it a matter of fact that Mr. Shaw of the Wage and Hour office called him first?

A. I wouldn't know that. I didn't answer the phone.

Q. You don't know how he got the first notice?

A. No, I don't.

Q. Then you contacted Mr. Hollenbeck and Mr. Call, is that right?

A. No, I didn't contact Hollenbeck. I contacted Sherman Call.

Q. (By Trial Examiner Bennett): You saw him in person, did you?

A. I saw him in person, yes.

(Testimony of Chester Arnold Wuelfken.)

Q. (By Mr. Weston): Did you give him some application blanks? [14] A. That is right.

Q. Did you give Mr. Hollenbeck some application blanks?

A. Well, not at that time. I don't know, I gave some application blanks out later on, but I don't remember exactly who they were to.

Q. So after receiving notice that two employees wanted union organization, then you called the meeting and the first meeting was June 18, is that right?

A. I believe that is the correct date.

Q. About how many did you have at that meeting?

A. The first meeting, approximately seven, somewhere in that, within one or two of that.

* * * * * [15]

Q. At either of these meetings, did you or Mr. Mills or anyone else tell them if they joined at that time it would cost five dollars, and if they joined later on it would cost twenty-five dollars?

A. I believe they asked what the initiation fee was and I told them that on, in organizing a new plant, we usually put a five dollar initiation fee on, the original organization.

Q. But if they joined later on, if they got a contract, it would cost \$25, is that right?

A. Additional members, at a later time.

Q. In other words, you were making a special deal for those that came in at that time?

A. A new organization, in other words. * * * * *

F. T. BALDWIN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Will you give us your name and address, Mr. [17] Baldwin?

A. F. T. Baldwin, 613 Idaho Street, Room 201, Boise, Idaho.

Q. What is your occupation, Mr. Baldwin?

A. Secretary-treasurer of Local 483, Teamsters Union, A.F.L.

Q. In that office of secretary-treasurer, do you have the duties of keeping the records submitted to the Boise office by the business agents in the field? A. Yes.

Q. Are they kept under your direct control?

A. Yes.

Q. Do you further have any duties as far as organizing employees, is concerned?

A. Well, yes, usually after they have had one or two meetings I go in and help them get organized.

Q. Did you have any such contact with Home Dairies Company? A. Employees, you mean?

Q. Yes. A. Yes.

Q. When did you first help out, Mr. Baldwin?

A. The first meeting I attended was on about the 9th of July, and then on the 24th of July.

Q. On the meeting of the 9th, at that meeting, was Mr. Wuelfken there?

(Testimony of F. T. Baldwin.)

A. No, I don't believe he was that night.

Q. You took over that meeting in his place? [18]

A. Yes. He had another meeting.

Q. You conducted that meeting?

A. That is right.

Q. Were there many individuals there?

A. There was quite a crowd. I wouldn't know exactly how many. There was quite a bunch there, though.

Q. By quite a bunch, what do you mean, 10, 20, 30?

A. Oh, I would imagine there was around 20.

Q. Did you have any additional persons sign application blanks at this meeting?

A. We distributed some that night and there was some taken out. They were signed that night, and also there was some given out that were signed later.

Q. I see. How many were signed that night, approximately? A. Pardon me?

Q. About how many were signed that night?

A. I think five.

Q. Do you have any idea about how many, approximately, were signed later?

A. Five. There was a total of ten signed by the night of the 24th.

Q. I see. That is ten in addition to those of which Mr. Wuelfken spoke?

A. Ten in addition to the thirteen we already had signed.

Q. What did you do with the applications? [19]

(Testimony of F. T. Baldwin.)

A. Put them in a file in our office.

Q. Was that together with the applications that Mr. Wuelfken turned over to you? A. Yes.

Q. Are these the applications about which we have been talking (indicating)? A. Yes.

Q. How many applications are there?

A. Twenty-three.

* * * * * [20]

Q. (By Mr. Weil): Showing you General Counsel's proposed exhibits 2-A through 2-W, the signatures appearing on those, on most of those applications, are obviously in a different penmanship than the dates that appear thereon. Can you explain that, Mr. Baldwin?

A. Well, the dates on the 7th and 9th I put in myself. The employees involved signed the applications themselves. They filled out the bargaining portion of the application, signed the top and bottom portion and also the back, on the information we need, their occupation, wage scale and also their beneficiary in case of death.

Q. Their signature on these is necessary for this insurance policy to become effective, is that correct? A. That is right.

* * * * * [21]

Q. (By Mr. Weston): Did you see these signed yourself?

A. The ones that were signed at the meeting in which I was present, yes. I didn't see the other signed.

(Testimony of F. T. Baldwin.)

Q. Do you know which ones exactly they are?

A. No.

Q. Did you put this date "7" and "9" on here?

A. Yes.

Q. Did you ask them when they signed them?

A. I asked them if it was agreeable we used that date and they said yes, the first meeting they attended.

Q. They gave you their permission to put the date on them? A. Yes.

Q. (By Trial Examiner Bennett): You said five cards were signed July 9?

A. And five the 24th, I believe that is correct.

Q. (By Mr. Weston): You don't know which five they are?

A. No, I have no way of knowing. In an organization of a new plant, it is, you are not acquainted with the employees involved and it is utterly impossible to tell which one is which, and in the course of organizing we hand out the applications and the employee, we tell him what it means, the back and how to sign it, the back and so on and so forth, where to sign it, it would be utterly impossible to tell who signed which ones and so forth, in a meeting where there is——

* * * * * [22]

Q. (By Mr. Weil): Did you at any time write a letter to the company requesting them to bargain with the union? A. Yes.

Q. Is this a copy of that?

(Testimony of F. T. Baldwin.)

A. Yes. [24]

Mr. Weil: Will counsel stipulate that this is a true copy?

Mr. Weston: We will stipulate that that is a true copy.

Mr. Weil: I would like to have this marked as General Counsel's proposed 3.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3, for identification.)

Q. (By Mr. Weil): Did you mail the original of that? A. Yes.

Q. How did you address it?

A. We sent it to J. M. Muller, manager, by registered mail, receipt requested.

Q. What is the card attached?

A. That is just a return receipt, showing that someone signed it there at the creamery.

Mr. Weil: I would like to offer that letter and the receipt attached as General Counsel's 3.

Trial Examiner Bennett: Is there any objection?

Mr. Weston: What did you say it was attached to. What did you say was attached to it?

Mr. Weil: The receipt, return receipt.

Mr. Weston: No objection.

Trial Examiner Bennett: Admitted.

(The document heretofore marked General Counsel's Exhibit No. 3, for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 3

Registered

July 18, 1952

Mr. J. M. Muller, Manager

Home Dairies

424 12th Avenue North

Nampa, Idaho

Home Dairies

Dear Sir:

This is to advise you that this union represents a majority of your employees in the following appropriate unit:

all inside workers

all outside salesmen

all driver salesmen

all drivers hauling milk that are on the company's regular payroll.

This is a demand that you bargain with this union concerning rates that pay, hours and conditions of employment. Please set the earliest date that we can meet to negotiate.

You are also informed that in the event this union takes further action, whatever its form, such action does not constitute a waiver of its claims of majority status and this demand for bargaining. Thank you very much in advance. I am,
Yours truly,

F. T. BALDWIN,
Sec.-Treas.

FTB:jo

Return Receipt attached.

(Testimony of F. T. Baldwin.)

Q. (By Mr. Weil): Did you receive any answer to this letter? A. Yes.

Q. When?

A. It was about four or five days later, I think, around the 21st.

Q. Before you received the answer, did you have any, take any, further steps, in regard to this organization? A. What do you mean?

Q. Did you speak to any officials of the company?

A. I called on the telephone, talked to Mr. Little one morning, yes.

Q. What did you talk about?

A. Well, I told him that the information I had received, that some of the employees were being threatened and so on and so forth, and prevailed upon him not to do it if it was true, and he said that he wasn't doing it, and he didn't think the company was.

Q. Did you discuss an election at that time?

A. With him, no.

Q. When did you first discuss an election?

A. I discussed it with the labor commissioner, the State of Idaho, the labor commissioner, on the 16th, I think he called me and said that he was putting up an election notice.

Q. Who is this labor commissioner?

A. Well, the labor commissioner of the State of Idaho. [26]

Q. Is that Mr. Thompson? A. Robinson.

Q. Robinson? A. Yes.

(Testimony of F. T. Baldwin.)

Q. How did it happen that he was putting that up? Had you requested an election?

A. We had talked about that date and he had called and asked if that date was satisfactory and I told him yes, the date was satisfactory.

Trial Examiner Bennett: I would like to see these dates pinpointed a little more in these conversations.

Q. (By Mr. Weil): When did you first contact the labor commissioner in regard to having an— don't check your records—if you remember — an approximate date?

A. Well, I talked to him on July 16. At that time he said he was putting up, going over to put up a notice of election, to be held the 18th.

Q. Had you contacted him before that time?

A. The labor commissioner?

Q. Yes.

A. I believe a day or two ahead of that, yes, I had. That would be about the 15th, 14th or 15th, that he had suggested this date and asked if it was agreeable to us and we told him yes.

Q. (By Trial Examiner Bennett): You sent this letter on July 18, the one that is marked No. 3?

A. Yes.

Q. You said you telephoned Mr. Muller?

A. Mr. Little, I didn't talk to Mr. Muller. I talked to Mr. Little.

Q. To Mr. Little? A. Yes.

Q. When did you speak to him with relation to this letter?

(Testimony of F. T. Baldwin.)

A. Before I sent this letter here——

Q. (Interrupting): You telephoned him about these alleged threats?

A. Yes, that is right.

Q. How long before July 18?

A. I would say two or three days ahead of that, probably July 15, I don't remember, somewhere around there, not the exact date.

Q. Do you know his title with the company?

A. Not then, no.

Q. Do you know it now?

A. I understand he is secretary of the company or office manager.

Trial Examiner Bennett: That is all I have at this time.

Q. (By Mr. Weil): Did you petition the State Labor Board to run an election?

A. Yes, it was our understanding that the State Labor Board could hold an election the same as the National Labor Relations Board, and I talked to their attorney, Eli Weston, about it, just [28] in an offhand manner and I think Mr. Weston can probably bear it out that he also talked to the labor commissioner, at least that is the information I got from the labor commissioner.

Q. On that basis the commissioner called you and said he was in the process of putting up—what else did he say?

A. Well, he put the notice up and then the election was to be held the 18th and then it was post-

(Testimony of F. T. Baldwin.)

poned and I called him immediately and asked him why.

Q. How did you learn that it was postponed?

A. Some of the employees called me at home and wanted to know how come the election wasn't held and I called him and told him, I called him and he said the company wouldn't agree to the labor commissioner holding it.

Q. That was on what date?

A. The date was supposed to be 18th, that the election was held.

Q. Were you called immediately when the election was not held, or——

A. (Interrupting): Yes, that evening at home.

Q. That would have been the evening of the 18th?

A. The 18th, yes.

Q. Was that prior to the time that you had sent this letter?

A. No. I sent it out on the morning of the 18th.

Q. The morning of the 18th?

A. Yes.

Q. Did you get in touch with anyone representing the company to find out about why the election hadn't been held?

A. No. I only talked to the labor commissioner.

Q. What was your next contact with anyone representing the company?

A. I didn't have another contact with them.

Q. Until when?

A. Well, the day of the election, the day the election was finally held, on the 26th, I think, was the next date.

(Testimony of F. T. Baldwin.)

Q. You had no contact with them, except for sending the General Counsel's Exhibit No. 3 and receiving this answer, is that right?

A. That is right, yes.

Mr. Weil: Will you mark that General Counsel's 4, please.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Weil): Handing you General Counsel's Exhibit No. 4, is that the answer you received?

A. Yes.

Mr. Weil: I would like to propose that that be admitted into evidence.

Trial Examiner Bennett: Is there any objection?

Mr. Weston: No objection.

Trial Examiner Bennett: It may be admitted.

(The document heretofore marked [30] General Counsel's Exhibit 4 for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 4

[Home Dairies Letterhead]

Mr. F. T. Baldwin, Sec.-Treas. July 23, 1952

Local No. 483

Room 202, Labor Temple, Boise, Idaho.

Dear Sir:

We have your letter dated July 18 in which you demand that we bargain through your Local for

rates of pay, hours and working conditions for our employees.

Before we recognize your Union as the bargaining representative we would like to have this question determined by an election, and for your information we are willing to consent to the election providing the unit for bargaining purposes is appropriately determined.

We have been advised that an election may be requested either by the Union or the employer, and we suggest in this case that you file a petition and notify us accordingly.

Very truly yours,

HOME DAIRIES

RLL/eb /s/ RALPH L. LITTLE

Q. (By Mr. Weil): When did you—this election was to have been held on the 18th?

A. That is right.

Q. When did you next meet with the employees of the company after that?

A. On the 24th.

Q. What happened at that meeting?

A. Well, they were disappointed because the election hadn't been held and they were deciding on walking out the following Saturday unless the company agreed to the election. They were talking about it, discussing it amongst themselves.

Q. Did you take any part in the discussion?

A. Yes, I did.

(Testimony of F. T. Baldwin.)

Q. What was the final decision?

A. Well, the decision was that we would call Mr. Weston, write and tell him that unless something happened there, that the employees were going to walk out, which I did, I called him on Friday, the following Friday.

Q. What did Mr. Weston answer?

A. He then said they would agree to an election to be held by the labor commissioner.

Q. Did he answer that at the same time or did he call you back?

A. Well, he, I think, he called back a little later, if my [31] memory serves me right, and said they would agree to an election held by the labor commissioner.

Q. What did you do then?

A. They held the election on the 26th, then.

Q. Did you contact the labor commissioner yourself?

A. I told him that it had been changed, they would agree to an election, and then he set it up for the 26th, I suppose after checking with Mr. Weston or the company.

Q. (By Trial Examiner Bennett): That was a Saturday, July 26?

A. I believe that date is right, a Saturday. I can tell you in just a second.

Q. (By Mr. Weil): While that was going on, did you at any time contact the National Labor Relations Board?

A. Yes.

Q. When?

(Testimony of F. T. Baldwin.)

A. Well, I filed a petition with them for the election, I haven't got a copy of the petition, I can't tell you the date, I have it in the files there. If you will hand me my papers there, I can tell you.

Q. Here, does this serve to refresh your recollection?

A. Yes, on July 21. We also filed charges against them on July 21.

Q. You filed charges at the same time you filed the petition?

A. Well, it was one day after, we sent the charges in after we had heard rumors that they were going to discharge employees and [32] so forth.

Q. What action was taken on your petition, if you know?

A. The Examiner came in and was investigating the thing.

Q. The petition? A. Yes. The charges.

Q. Was any action taken on the petition?

A. No. We withdrew the petition.

Q. Why?

A. Well, we withdrew the petition because, of course, they wouldn't hold the election while an unfair labor practice was pending against the company.

Q. Have you refiled that petition or has the petition been refiled? A. The charge?

Q. The petition.

A. For election, no, it hasn't, it has been withdrawn. It was withdrawn on August 1st.

(Testimony of F. T. Baldwin.)

Q. Did Mr. Weston tell you why the company decided to consent to the election when you called him on the 24th?

A. I don't believe he said why, no. He just said they would consent to it.

* * * * * [33]

Cross Examination

Q. (By Mr. Weston): When you wrote the letter on July 18, which is General Counsel's Exhibit 3, when you wrote that, you knew there was to be an election, didn't you?

A. Well, I wasn't too sure, because the, I was under the impression that the election was going to be held the 18th, and it was postponed.

Q. Let's get this record straight on these elections. When you first asked for an election, you wanted the election to be conducted by our State Labor Commissioner, didn't you?

A. That is right.

Q. And I at that time told you there was some question as to whether the company was or was not engaged in interstate commerce, didn't I?

A. I think that is right.

Q. After that matter, then, I also informed you that I had so informed the labor commissioner of the State of Idaho?

A. I don't recall you saying that. I know that you did talk about, there was some question about whether it was under intrastate or interstate.

* * * * * [34]

Q. You were agreeable to that, weren't you?

(Testimony of F. T. Baldwin.)

That was satisfactory to you? A. Yes.

Q. To have the election conducted by our State Labor Commissioner? A. On the 26th?

* * * * * [36]

Q. (By Mr. Weston): Did you withdraw or ask the labor board to withdraw, the charges that had been filed against the company prior to the time of the election?

A. No. We only asked, you see, we filed with the——

Trial Examiner Bennett: Just answer the question.

The Witness: What was the question again?

Q. (By Mr. Weston): Did you ask to withdraw the charges that had been filed against the company just prior to the election? A. No.

Q. I believe you testified that the reason why the National Labor Relations Board didn't conduct the election was because there were charges filed?

A. I presume that is the reason. I don't know, it is my understanding they won't hold any election during the processing of charges.

* * * * * [38]

Q. You were perfectly agreeable to have that election and were perfectly agreeable that that election should be conclusive, as to whether you had the bargaining rights?

A. With the State Labor Commissioner, yes.

Q. As far as you were concerned, that would be decisive at that time? A. Yes.

Q. (By Trial Examiner Bennett): Do we have

(Testimony of F. T. Baldwin.)

the results of that election? A. We lost.

Q. (By Mr. Weston): Do you know the results of that election?

A. There was 23 no's and 17 yes's, I believe.

* * * * * [39]

Q. At the meeting in July, where Mr. Mills was present, did you or Mr. Mills or anyone else at that meeting tell these employees that they could get in at that time for \$5 and later on it would cost \$25?

A. I probably told them that myself because that is our rule under the international constitution and by-laws.

* * * * * [40]

Q. (By Mr. Weston): You also filed a petition with the National Labor Relations Board for an election, didn't you? A. Yes.

Q. The charges that were filed and the petition that was filed, they were filed prior to July 26, the time of the election?

A. I think that is right, yes. I might——

Q. (Interrupting): Just a minute.

A. Excuse me.

Q. You now have a charge filed which is incorporated in this complaint, requesting that the company bargain with the union without an election. Do you understand that? A. Yes.

Q. My question is, why did you permit the election to be conducted on July 26, did you expect us to bargain without an election?

* * * * * [44]

(Testimony of F. T. Baldwin.)

Mr. Weston: No, but I don't think that the Board would in the final analysis override the desire of the bargaining agent. In other words, are they going to order someone to bargain if he doesn't want to bargain? I think the paramount question here is what the representative of the union wants.

Trial Examiner Bennett: If you want to ask a direct question of that nature, I will permit it.

Mr. Weston: I have already asked this witness and he has already answered that he was willing to have the election and he was agreeable to it, to be bound by it.

Trial Examiner Bennett: I think he has so testified.

Mr. Weston: That is all. That is all I have, then, on that question.

* * * * * [46]

GORDON MILLS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): What is your name and address, please? A. Gordon Mills, M-i-l-l-s.

Q. Address? [49]

A. 516 Fourteenth Avenue North, Nampa.

Q. What is your occupation?

A. Maintenance worker.

Q. Have you ever been employed by the Home Dairies Company? A. Yes.

(Testimony of Gordon Mills.)

Q. During what period were you employed there?

A. Well, if my memory serves me correctly, it was November 8 to——

Q. (Interrupting): What year?

A. 1951—to August 4, 1952.

Q. What did you do there?

A. In the maintenance department.

Q. Who was your immediate supervisor?

A. Well, I guess Lynn Van Houten, oh, he was, when Jim Muller wasn't there, he took over, but Jim Muller was supposed to be my boss.

Q. He was your boss?

A. Yes.

Q. (By Trial Examiner Bennett): Did you say you were at Nampa or Caldwell?

A. Nampa.

Q. (By Mr. Weil): Did you know anything about the union's, how the union started organizing at Home Dairies? A. A little.

Q. Were you familiar with those circumstances? Perhaps you will [50] tell us.

A. A lot of it was just from hearsay, I mean, because I was on my vacation.

Q. Tell us what you know directly.

A. Well, this Sherman Call, I believe was his name, and Gene Hollenbeck, had gone and contacted the union representatives or they had contacted them. Now, I don't know if they went over or——

Trial Examiner Bennett (interrupting): I think

(Testimony of Gordon Mills.)

we might confine this to what he personally first learned.

Q. (By Mr. Weil): When did you first come in contact with anyone that was connected with the union?

A. Well, it was after returning from my vacation, June 19, I think, it was after that, between then and July 1st.

Q. After June 19 and before July 1. Did you sign an authorization card, an authorization application blank? A. Yes.

Q. When did you sign that?

A. I would say that was July 1, I am pretty sure, at a meeting.

Q. At a meeting on July 1? A. Yes.

Q. Did you see anyone else sign a card at that time?

A. Yes. One that I know of was Lynn Van Houten and——

Q. (Interrupting): How do you know?

A. We were sitting together, both in the maintenance department. [51]

Q. I see.

A. And we both used the same pencil, and we borrowed a pencil from Wuelfken. So that is why I remembered that.

Q. Mr. Wuelfken was heading up that meeting, I take it? A. Yes.

Q. Did you have any conversations with any officials of the company in which the union was discussed? A. Yes.

(Testimony of Gordon Mills.)

Q. When did you first discuss the union with any official of the company?

A. Well, the evening of, I guess it was July 1.

Q. With whom did you talk to then?

A. Jim Muller.

Q. That is the gentleman you referred to as your supervisor, is that correct?

A. That is right.

Q. Was there anyone else present?

A. There was four or five guys around there. It was around quitting time.

Q. Where was this discussion held?

A. It was in the garage where they repaired the trucks.

Q. Did the other persons there take any part in the conversation?

A. Not to my knowledge.

Q. Were they listening in on the conversation, if you know? [52]

A. I think so.

Q. I mean, were they in a position to listen in on the conversation?

A. I think so, I guess they were, yes.

Q. The only persons that spoke, then, were you and Mr. Muller, is that correct, to the best of your recollection?

A. Yes, that is right.

Q. Do you remember what was said in this conversation?

A. Well, Jim asked me if I would come down, it was something on the new building, and see about it. I believe that is what it was. Anyway, I said I hadn't planned on coming back and he

(Testimony of Gordon Mills.)

wanted to know why, and I said I was going to the union meeting, and he wanted to know if I would tell him, he said he had asked around what this was all about, and what the trouble was, and I said maybe the rest of them was afraid to talk up, but I wasn't, I didn't see any reason for fear, and he wanted to know what they were, and I said, well, the two main issues were a raise in hourly pay, what we would figure to hourly pay, and time and a half for overtime, and I told him that I intended to go.

Q. Was there anything further, if you can remember, about this discussion?

A. Oh, yes, we talked on quite awhile.

Q. Was Mr. Van Houten around at that time?

A. I don't really remember if he was there or not. There was four or five fellows around there.

Q. What was the condition of the work there? Was there a lot of work to be done at that time? Were you kept pretty busy or were you——

A. (Interrupting): Yes, I never lacked for anything to do.

Q. Was there any backlog of work to be done?

A. I was told so by Jim Muller.

Q. When were you told so?

A. Oh, it was right after I got back from my vacation. I know Lynn hadn't gone on his vacation yet.

Q. It was sometime after the 19th, then?

A. Yes.

Q. Was that within a day or so after the 19th?

(Testimony of Gordon Mills.)

A. Well, it was close to that. I don't know just when. I wouldn't say right to the exact date.

Q. Did you have another discussion with Mr. Muller when Mr. Van Houten was with you, that you recall, after this conversation?

A. The next day, a very heated argument.

Q. What happened?

A. Or a discussion, if you want to call it that.

Q. Was there anyone else present at that time?

A. Lynn Van Houten was there. There were others in the distance, but I don't know who they were.

Q. Where was this?

A. That was in the maintenance shop.

Q. What was the occasion of the argument? [54]

A. Well, I knew that from the way Jim was hanging around that day that he had something—

Trial Examiner Bennett (interrupting): Just tell us what took place, what he said and what you said, and how it came about.

The Witness: Well, he just came out and asked me did I go to the union meeting.

Q. (By Mr. Weil): What did you answer?

A. I told him yes.

Q. Did he say anything further?

A. One thing that he said, that I remember very clearly, was that "we really don't need only one maintenance man here".

Q. At that time how many did you have?

A. Two, in the direct maintenance. They classed the two mechanics as maintenance, too, I guess.

(Testimony of Gordon Mills.)

Q. Do you remember anything else that was said?

Q. (By Trial Examiner Bennett): Perhaps if you could give us the conversation in the sequence that it took place, it would be helpful.

Q. Do you want it word for word?

Q. If you recall it that way.

A. Well, that would come pretty close to what I had to say.

Q. Starting with the beginning, if you can.

A. "Jim," I says, "you are trying to tag this whole union deal on me," and I said, "by God you can make me awful mad but you are not going to scare me a damned bit." I said, "If I lose my job [55] over this I am going to see what can be done about discrimination because I wasn't the instigator of it." I said, "I merely went up there as an individual and," I said, "now you are trying to pin something on me that I am not to blame for at all."

Q. What had he said before that?

A. That he didn't need another maintenance man and he had just told me a few days before that, he just told me a few days before that he didn't know how in the hell we was going to catch up with the work we had to do.

Q. Continue with your answer.

A. Well, I can't remember it all, but I know I was pretty damned mad.

Q. (By Mr. Weil): Do you remember any-
more? A. Oh, not of interest, I guess.

(Testimony of Gordon Mills.)

Q. Whether it is of interest or not.

Trial Examiner Bennett: Give us the rest of the conversation.

A. I expect that would cover it good enough.

Q. (By Mr. Weil): Do you remember Mr. Muller saying anything about laying off any men?

A. Yes.

Q. What did he say?

A. He said checkers, he said, he mentioned one specifically, Abbie Roe.

Q. How did he happened to mention checkers and Abbie Roe? [56]

A. I don't know what his motive was for that.

Q. What was the conversation that it led up to?

A. He said that if we have a union, we just can't afford it, and we are just going to have to lay off some employees.

Q. (By Trial Examiner Bennett): How did he refer to Abbie Roe?

A. He just mentioned that.

Q. What did he say?

A. They would have to lay Abbie Roe off. That is all that was said. I don't know why he picked on an old man.

Q. (By Mr. Weil): Was there a committee formed in the plant of employees about this time, to your knowledge? A. Yes.

Q. Were you a member of that committee?

A. Yes.

Q. Do you know how this committee came to be formed, how it happened?

(Testimony of Gordon Mills.)

A. Requested by Jim Muller that a representative from each department meet with the management.

Q. Whom did he request, I mean, how did it come to your attention that he requested it?

A. Well, they just came around, everybody, I guess, they just came around to everybody, I guess.

Q. (By Trial Examiner Bennett): Just say what happened to you.

A. Well, he just called a group of us there in the maintenance and said that they would like to have a representation from each [57] department.

Q. When did this take place?

A. Oh, the date I wouldn't know.

Q. You told us just now about the conversation you had the day after the July 1st meeting.

A. Well, it was a few days after that, but I wouldn't want to be specific, it was a few days after that, I wouldn't want to say just exactly.

Q. (By Mr. Weil): Was this Mr. Muller that called the fellows together in your section?

A. He requested it.

Q. How did you come to be a member yourself? How were you designated?

A. I nominated Lynn Van Houten and then a few hours after that Lynn came around and said that he would rather I would be the representative, and I don't know that other fellow's name, that other mechanic—Harold—I can't think of his last name—he said, "Why don't both of you go?",

(Testimony of Gordon Mills.)

and I said, "All right, I would just as soon both of us would go."

Q. (By Trial Examiner Bennett): Is that what happened? A. Yes.

Q. (By Mr. Weil): Do you recall the other members of the committee, who they were?

A. Oh, yes.

Q. Who were they? [58]

A. Let's see. It was——

Trial Examiner Bennett (interrupting): Either you do remember the names or you don't.

The Witness: If you would get the seniority list, I could show you the names, that I remember.

Trial Examiner Bennett: It is up to you, Mr. Weil. If you want to refresh his recollection, you may, or not, as you see fit.

Mr. Weil: Let me ask some questions directly.

Q. (By Mr. Weil): Was Paul Roe a member of this committee? A. Yes.

Q. Was Isaac Helton? A. Yes.

Q. Was Clyde Clevenger a member?

A. Yes.

Q. Was George Schamber a member?

A. Yes.

Q. Were there any other members besides yourself and those I named?

A. I don't remember if Gene Hollenbeck was or not.

Mr. Weil: That is all on that.

Q. (By Mr. Weil): Did this committee ever meet with any members of management?

(Testimony of Gordon Mills.)

A. Yes.

Q. When? [59]

A. That date I don't remember either.

Q. Was it before the election, that it was held there? A. Yes.

Q. Was it long before?

A. It was the date that the notice of the election was posted, because Jim Muller came back to the meeting and said there was a notice on the bulletin board. I believe it was Jim Muller that said that.

Q. Was that the date that the notice of the first election was posted or the second election?

A. The only election we ever had.

Q. The notice of the election that was held?

A. Yes.

Q. Because there has been testimony that there was a notice posted prior to that time, but that election was not held—

A. (Interrupting): Wait a minute, now, wait a minute. That I won't say. I know that there was an election notice posted and it was brought into the meeting at the time the committee met with management. I do know that.

Q. (By Trial Examiner Bennett): You made some reference to Mr. Muller in connection with that notice.

A. I believe it was he who came back into the meeting. He left the meeting and came back and said that there was a notice on the board, if I remember correctly.

(Testimony of Gordon Mills.)

Q. (By Mr. Weil): What time of the day was this meeting held? [60]

A. It was in the afternoon. We met in the unloading room, where they unload the cans, all sitting on boxes.

Q. Who besides the committee was present?

A. Ralph and Buck——

Q. (Interrupting): Would you give us their last names?

A. Ralph Little, Buck Lawrence, Jim Muller and the attorney here.

Q. (By Trial Examiner Bennett): Mr. Weston?

A. Mr. Weston, at the opening of the meeting.

Q. How did the meeting come about, if you know?

A. As I said before, it was requested by Mr. Muller.

Q. Mr. Muller asked you to come to the meeting?

A. Asked us to arrange a meeting, to get our representatives together and then meet with them.

Q. You told us about that before?

A. Yes, that is right.

Q. (By Mr. Weil): Was this meeting with management representatives held immediately after you were selected as a representative of the committee? Was this meeting held with management held immediately after you were selected by your fellow employees to represent them?

A. No. If I remember correctly, there was a postponement of that meeting. We were to meet

(Testimony of Gordon Mills.)

one day and then it was postponed to the next day, if I remember correctly.

Q. So that meeting would have been a couple of days after that [61] selection, after the committee was formed? A. Yes, well, yes.

Q. (By Trial Examiner Bennett): Let's see if we can pin this down a little bit. You told us how Mr. Muller asked you to appoint a representative from your department. Now, with relation to that day that he made the request, when was the selection made?

A. We made the selection that day.

Q. With relation to the day the selection was made, when did you have this meeting with Mr. Muller?

A. I would say it was two or three days after that.

Trial Examiner Bennett: Next question.

Q. (By Mr. Weil): Do you recall what was said at this meeting? Do you recall what took place at this meeting? Would you give us a play-by-play description of it, who said what?

A. Well, it was brought out, we had a committee meeting, after the committee was formed, we met in the dining room and it was brought out there that if legal counsel was representing the company, or if he was present, that we didn't wish to discuss anything with him.

Q. Why was that?

A. I beg your pardon?

Q. Why was that?

(Testimony of Gordon Mills.)

A. Well, we didn't have legal counsel.

Q. All right. What happened at the meeting?

A. Well, I was appointed chairman of this committee, and I relayed to management and to Mr. Weston the feelings of the committee, which I thought was my duty, and asked that——

Q. (Interrupting): What were the feelings of the committee?

A. That Mr. Weston excuse himself from the meeting, after all we were just meeting with management.

Q. Did he do so?

A. Yes, after a little discussion.

Q. Who presided at the meeting with management, or was it that formal a meeting?

A. Well, it was. I guess I was the in-between more or less.

Q. (By Trial Examiner Bennett): You mean you spoke for your group? A. Well, yes.

Q. Did someone speak for their——

A. (Interrupting): Well, no, the men were to speak for themselves.

Q. Who spoke for management, if anyone?

A. All, Mr. Lawrence, Mr. Little, and Mr. Muller.

Q. They all spoke?

A. Yes. It was, what would you say, a round table discussion, just informal.

Q. (By Mr. Weil): In the course of this meeting, what sort of topics did you discuss?

Trial Examiner Bennett: Perhaps if we could

(Testimony of Gordon Mills.)

have the [63] witness tell us the sequence of the meeting as it took place, before we get into another type of questioning, it would be more instructive.

A. Well, I just don't remember word for word how everything came out, but——

Q. (By Trial Examiner Bennett—interrupting): After Mr. Weston left, what took place then?

A. I know we let management lead off. They wanted to tell us their hardships, that they couldn't afford more money.

Q. Who did this talking?

A. Well, I think they all three had a little say-so about that.

Q. Continue.

A. And I believe it was Ralph Little that brought up that they weren't, that it was unlawful to bargain while the union was in the process of organizing the plant, anyway, it was the employees who were in the process of organizing and——

Q. (Interrupting): What is your best recollection, whether he used "union" or "employees"?

A. Well, the union, if I remember correctly, that is the way the law read.

Q. (By Mr. Weil): What else?

A. It was brought out by Little himself, well, first one would say that they couldn't give an increase and I thought Jim and Ralph was going to get in an argument before it was over as to whether they could or couldn't give an increase. [64]

Q. (By Trial Examiner Bennett): Ralph who?

A. Ralph Little.

(Testimony of Gordon Mills.)

Q. (By Mr. Weil): Jim Muller and Ralph Little?

A. Yes. And Ralph says, "We can't do anything now but after this is washed aside we can make some adjustments."

Q. Was there anything further that you remember?

A. No. That was pretty near the end of the meeting. Everybody left with a more or less friendly attitude.

Q. Was there any, were there any representatives of the union at this meeting?

A. No. You mean international representatives or business agents?

Q. Yes. A. No.

Q. Do you know whether any were invited?

A. No, they definitely were not, and that is why we didn't want any legal staff on the part of the company there.

Q. Was any mention made at the meeting of any changes in other working conditions than wages?

A. State that again, will you, please?

Q. Was any mention made in the meeting of any changes of other working conditions than wages, for instance, hours of work or conditions of employment other than wages?

A. No. They didn't want to discuss too much. I think—now, this is my own personal opinion—

Trial Examiner Bennett (interrupting): We don't want to get into that.

Q. (By Mr. Weil): Tell us what was said, not

(Testimony of Gordon Mills.)

a matter of opinion. Did they say anything to back up your personal opinion?

A. Well, then, I can't say anymore, if I can't bring out my own personal opinion, of what the meeting was called for. That is what I wanted to bring out.

Q. Was any discussion had of the length of the work day? A. Not to my knowledge.

Q. Was there an election held after this in the plant? A. Yes.

Q. Who conducted this election, if you remember?

A. You mean, who was the man who——

Q. (Interrupting): Who was the man who ran the election?

A. He was a State man. I can't recall his name. I was introduced to him, too.

Q. When was this election held, do you remember?

A. By that, you mean the hour, or——

Q. (Interrupting): No. What date?

A. Well, I can't tell you the date.

Q. Can you tell me approximately?

A. No.

Q. Did you attend the meeting on the 24th of July, of which Mr., I think—I don't know which one of the union agents mentioned it—— [66]

Mr. Baldwin (interrupting): The 24th?

Q. (By Mr. Weil—continuing): The 24th, at which there was some discussion about walking out if there was no election?

(Testimony of Gordon Mills.)

A. Attending a union meeting at which there was a discussion about walking out?

Q. Yes. A. Yes.

Q. The record will show, I think, that that meeting was on the 24th. Was the election held after that? A. After that meeting?

Q. Yes. A. Yes.

Q. Was it long after that meeting?

A. Not very long, if I remember correctly.

Q. A couple of days?

A. I would say around that time. It was pretty close there.

Q. So the election would have been held around the 26th, is that right. That was a Saturday, I believe. Yes.

Trial Examiner Bennett: While I think about it, may we have the exact title of the State agent for the record, the State official who is involved?

Mr. Weston: Commissioner of Labor.

Trial Examiner Bennett: Commissioner of Labor?

Mr. Baldwin: For the State of Idaho.

Q. (By Mr. Weil): Where was this election held? [67]

A. It was in the little wholesale room, I don't know as the room has ever been named, but——

Q. (Interrupting): Was it a room in the plant?

A. Yes, a small room.

Q. Were you present at the voting?

A. I was an observer.

Q. You were an observer for the union?

(Testimony of Gordon Mills.)

A. Yes.

Q. Who was the company observer?

A. Ralph Little.

Q. Were any other members of management other than Mr. Little present during the voting?

A. In the room?

Q. Yes.

A. Not during the voting, no, there was no one there but Ralph Little and I and this State Labor man and whoever was doing the voting.

Trial Examiner Bennett: Does the record supply Mr. Little's title?

Mr. Weston: Secretary-treasurer.

Trial Examiner Bennett: Of the corporation?

Mr. Weil: Yes.

Q. (By Mr. Weil): Do you know where Mr. Muller was during the voting?

A. There was two large windows there and he was right by those, [68] I would say, oh, ten, fifteen feet.

Q. (By Trial Examiner Bennett): Ten or fifteen feet from what? A. From the windows.

Q. Where was he with relation to where the polling was?

A. The polling was on the other side of the window. He was on the outside and we were on the inside.

Q. You mean outside the room completely?

A. Yes.

Q. On the outside of the building?

A. Well, there is a porch out there. I don't

(Testimony of Gordon Mills.)

know if he was under a roof, I don't know if that is a, considered a building or not, technically.

Q. (By Mr. Weil): Was there a door there beside the two windows?

A. No. It is at the end of the building.

Q. Was he near the door?

A. Yes, he was 20 or 25 feet from the door.

Q. Was he in a position past which the voters had to come to vote?

A. Well, they were all out, congregated out there.

Q. They were congregated out—around him, or I mean, in that section of the floor?

A. Well, they were all—

Q. (Interrupting): Was anyone else with Mr. Muller?

A. Well, all of them, Buck Lawrence and Jim Muller and all the employees were all out there during the election. [69]

Q. Was that usually the case at that time of day, everybody was out there in that space?

A. Oh, no.

Q. (By Trial Examiner Bennett): By "Buck Lawrence", do you mean Carroll Lawrence, the manager?

A. I never did hear his name. That is all I know.

Q. Was that the manager or an employee?

A. He is the co-owner, I have been told.

Q. (By Mr. Weil): Were Mr. Muller or Mr.

(Testimony of Gordon Mills.)

Lawrence engaging the men in conversation during the time they waited to vote?

A. Everybody was talking. What they were saying, I didn't know.

Q. You were inside the windows, were you?

A. Yes.

* * * * * [70]

Cross Examination

Q. (By Mr. Weston): Isn't it a fact, Mr. Mills, they also told you to go ahead and listen to what the company had to say, but it wouldn't make any difference anyway, or words to that effect?

A. No, I wouldn't say so.

Q. Isn't it a fact that Mr. Baldwin or somebody representing the union said, "Well, go ahead and have your meeting, listen to what they have to say and speak your piece, but it doesn't mean anything"?

A. He said go ahead.

Q. He said go ahead and have the meeting, Mr. Baldwin said that, did he?

A. Baldwin was informed that there was to be a meeting, but as to what he said, I don't remember of him expressing much, only he said go ahead and have the meeting, but the last I don't remember of him saying about it to me.

Q. You are quite sure that he didn't tell you to put the attorney out if he wasn't represented?

A. No. That was brought up in the meeting and I don't even know who brought that up.

Q. That was your own idea?

(Testimony of Gordon Mills.)

A. That was brought up in the meeting that they bet the company attorney would be there.

Q. You decided that you didn't want the company attorney there [74] if you didn't have yours there?

A. That was the body's ruling. The union didn't have anything to do with that.

Q. It was your feeling if the company was to be represented by counsel, then, the union should be represented by counsel?

A. That is right. We explained that to you that day.

Mr. Weil: I think there was a misstatement there in the question. I don't believe that he stated it was his understanding that if the company was to have their attorney that the union should have an attorney. He said that the union didn't know anything about this discussion. I think perhaps he meant that the committee should have an attorney.

Mr. Weston: I object to your trying to interpret the testimony.

Trial Examiner Bennett: You can re-examine him if you wish to on redirect.

Q. (By Mr. Weston): I believe you testified on direct examination, Mr. Mills, that among other things at that meeting Mr. Little said that it was unlawful to bargain with your committee while the company was being organized by the union, or words to that effect, is that right? A. Yes.

* * * * * [75]

(Testimony of Gordon Mills.)

Q. You wanted time and a half for overtime?

A. Yes.

Q. Is that when he explained to you that if you had a union contract with time and a half, that it would cost the company too much money?

A. Well, he brought that out at that time, I believe.

Mr. Weston: I believe that is all.

* * * * * [77]

CLYDE CLEVINGER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [82]

Direct Examination

Q. (By Mr. Weil): Would you give us your name and address, please?

A. Clyde Clevenger, 1023 Fern, Nampa, Idaho.

Q. What is your occupation?

A. Deliveryman.

Q. Are you employed at the Home Dairies Company? A. Yes.

Q. How long have you been employed there?

A. Since the first day of March 1950.

Q. Have you signed a card authorizing the Teamsters Local 483 to bargain on your behalf?

A. Yes.

Q. When did you sign the card?

Trial Examiner Bennett: Which card was that, 2-what?

(Testimony of Clyde Clevenger.)

Mr. Weil: That is 2-A.

A. It was on or about the 18th, I believe, of July.

Q. (By Mr. Weil): The 18th of July?

A. Wait a minute. It might have been June. It was the first meeting that we had down there.

Q. The first meeting?

A. The first meeting.

Q. How did you hear about this meeting? How did you happen to attend this meeting?

A. There were a couple of boys that had went over and contacted the union in some respect and the union man said that he would [83] let it be known when the first meeting would be held and I was told about a day or two before the meeting what night it would be on.

Q. Do you remember who told you?

A. No, sir, I don't.

Q. Did you attend—that was the meeting of June 18th that you attended, then, the first union meeting held?

A. Yes, yes.

Q. Do you remember who was present at that meeting?

A. Well, yes, approximately, I believe I know who was present at that meeting.

Q. Could you tell us as many as you recall?

A. I think there was Gene Hollenbeck, Gordon Mills, Lynn Van Houten, Clay Buckles, and I believe this Norman Stathopulos, or whatever his name was, was there. And that is about all that I recall being there.

(Testimony of Clyde Clevenger.)

Trial Examiner Bennett: You say Norman Stathopulos?

The Witness: Yes, I believe he was there.

Q. (By Mr. Weil): Was he familiar to you, was Mr. Stathopulos familiar to you?

A. Yes, very familiar.

Q. How did it happen that you were familiar with him?

Q. You mean that I was acquainted with him?

Q. Yes.

A. Well, we had done lots of talking and, I don't know, we [84] had chummed around a little, more or less, at the dairy there and he had been out at my place once or twice at night.

Q. Where was he working at that time?

A. He was on the route for the so-called Woodlawn Dairy.

Q. Where did he get his milk?

A. At Home Dairies' plant.

Q. And you met him when he came in there?

A. Yes.

Trial Examiner Bennett: What did he do, now?

The Witness: He drove a truck for the Woodlawn Dairy that was working out of the Home Dairies plant.

Q. (By Mr. Weil): Was milk for the Woodlawn Dairy produced at the Woodlawn Company?

A. No, sir. It was produced at the Home Dairies plant, processed there.

Q. Did you have any conversation with Mr. Muller after that meeting?

(Testimony of Clyde Clevenger.)

A. Yes. I had one conversation with him.

Q. When was that?

A. I can't just exactly recall the date, but it was, I believe it was, the day before our second meeting that we had.

Q. Was that the meeting that testimony has indicated was on July 1?

A. I would say yes.

Q. So that it would be probably the day before July 1? [86]

A. I believe it was on the day of the meeting that was held that night.

Q. On July 1? A. Yes.

Q. Who was present when you spoke, talked to Mr. Muller? A. No one.

Q. Just yourself and he?

A. Just he and myself.

Q. What time of the day was that?

A. I would say that was around 11 o'clock in the day, when I was just getting ready to go home.

Q. I see. And where did you talk with him?

A. It was at the door, the entrance to the dining and dressing room.

Q. Is that the small building behind the main plant?

A. It adjoins the garage and the shop out there. They are all under one building out here.

Q. Suppose you tell us what was said and by whom during this conversation.

A. Well, as I recall, Mr. Muller asked me how our meetings were going and I said, "Very well,

(Testimony of Clyde Clevenger.)

I guess, as far as I know." He said he would like to——

Q. (Interrupting): By "meetings," do you know what he was referring to?

A. The union meetings. [87]

Q. How do you know he was referring to the union meetings?

A. Without a doubt. They were the only meetings we were having.

Trial Examiner Bennett: Did he use the word "our" or did he use another word?

The Witness: "How is your meetings going?"

Q. (By Mr. Weil): And then you told him what?

A. I told him "Very well," I thought. And then he said, "I would like to find out what the trouble is, why the boys are trying to bring something in like this. I think I have been agreeable to anything they ever have suggested to me", and I said, "Well, Jim, it's because of the overtime they are working and not getting any extra money for it." Basing that on an eight-hour day was what I was referring to. And then there was a time that some of the employees had to go on night shifts there and they received a raise out of it. Us drivers were on nights at the time, too, and we never got a raise at any time of the year when we went on nights. I said, "I think some of the boys are wound up over that pretty tight," and I said, "The holidays, we don't get any extra pay for that. And other than that," I said, "I think the boys are fairly

(Testimony of Clyde Clevenger.)

well satisfied, but they can't see they are going to have any way of getting any extra money for putting in over eight hours a day."

Q. Do you recall anything else about this conversation?

A. Yes. He says, "After all, I would like to get to the bottom of this. If you could find out why these boys keep on [88] insisting they have the union in I would like to know about it and see if I can iron this out," but he never did contact me after that.

Q. Do you have any knowledge of an employee committee that was formed in the plant?

A. I knew that they were forming a committee, yes, I knew that.

Q. How did you find out about that?

A. The route foreman was the first one that told me that everyone that, that they were going to form a committee to meet with the stockholders.

Q. Who was the route foreman?

A. It was Leonard Cable at the time. And I was asked by one or two of the drivers if I would be on that committee and I said no, that I was going fishing that weekend and I didn't figure I would be back in time for the meeting, and I told them then that I didn't see there was going to be anything accomplished in the meeting and I didn't figure on ruining the fishing trip just for the meeting.

Q. Who was selected by that group of drivers in your place then?

(Testimony of Clyde Clevenger.)

A. I believe George Schamber and Gene Hollenbeck was the two drivers in our place then.

Q. Did you vote in the election?

A. Yes.

* * * * * [89]

Cross-Examination

Q. (By Mr. Weston): At the time you talked to Mr. Muller and mentioned the fact that the boys weren't interested in overtime, night shifts and holidays, he didn't make any threats to you at that time, did he? A. No, sir.

Q. Or promises? A. No, sir.

Q. What you reported here is practically all the conversation you had at that time, on that question? A. Yes.

Q. You have given us practically everything that was said, have you?

A. I believe that, everything that I can recall anyway. * * * * * [91]

GENE HOLLENBECK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Would you give your name, please, and spell [93] it?

A. Gene Hollenbeck.

Q. And your address?

A. 1411 Eleventh Avenue South, Nampa, Idaho.

(Testimony of Gene Hollenbeck.)

Q. What is your occupation? A. Driver.

Q. Are you employed by the Home Dairies?

A. Yes, I am.

Q. What do you do there, drive?

A. Yes, I drive a truck.

Q. I guess that follows.

Did you join the union while you were employed there? A. Join it?

Q. Yes.

A. No. I signed an application.

Q. You signed an application blank?

A. Yes.

Q. When did you sign an application blank?

A. I signed it the first meeting, at the first meeting.

Q. That would be the meeting of June 19, is that right, approximately? A. Yes.

Q. When did you first know about the union being interested in organizing the employees?

A. The day that Sherman Call and myself went over to Boise to [94] the Wage and Hour Office. That was to talk to Shaw, I don't know his first name. And he told us that there was nothing that the Wage and Hour could do on this fluid milk deal because it was through the second process and going interstate, and he said that, he said something, I forget just how he worded it, that the thing for us to do was to get ahold of this, he gave a name but I couldn't think of it, he was a union man that was supposed to be with the Teamsters, and he would give him a ring, and I told him that

(Testimony of Gene Hollenbeck.)

I didn't want any part of it right then, I told this Sherman Call, well, he was supposed to have given the union man Sherman's number to get ahold of, to call him at his home.

Q. Then, after that occurrence, did you know that Mr. Baldwin or Mr. Wuelfken had contacted Mr. Call?

A. Well, I knew one of them did at the time that Shaw called the union man, he wasn't home, or he was out of town, and he left a note or he was supposed to have left a message to call Sherman Call.

Q. When did you hear about this meeting to be held on the 18th?

A. Sherman Call told me.

Q. Sherman Call told you that? A. Yes.

Q. And then he resigned before the meeting was held? A. Yes.

Q. Did you attend any other meetings of the union than the [95] first one?

A. Yes. I attended, I believe it was the second meeting, and then I attended one more, but I don't remember which one it was.

Q. Did you ever discuss the union with any of the owners of the company or any of the members of management? A. Yes.

Q. With whom?

A. Well, Buck Lawrence, this Carroll Lawrence, and this Jim Muller, I believe, was the only ones that—indirectly—I didn't—I was led around to the union through our conversation.

(Testimony of Gene Hollenbeck.)

Q. Were these two conversations or one conversation with both?

A. Two conversations, a separate one with each.

Q. Let's take the first one you mentioned.

A. With Lawrence.

Q. Who else was present at that occasion? Do you remember?

A. There was just Lawrence and myself.

Q. Where did you talk?

A. Around where they unload the cans off their can trucks.

Trial Examiner Bennett: Could you endeavor to fix a time?

Mr. Weil: Yes, I am just about to try to.

The Witness: It would have been around 12 noon.

Q. (By Mr. Weil): About what date?

A. I think it was around after about that third meeting. I [96] wouldn't say for sure.

Q. Would that be the meeting of the 7th of July? A. I believe so.

Trial Examiner Bennett: You mean of 9th of July, I think.

Mr. Weil: The 9th, yes.

Q. (By Mr. Weil): Can you tell us what was said in this conversation?

A. Well, I think what started it off was the fact that I told Buck, there had been a lot of talk around there that I had been the one that had started the union, I didn't want them to think that I was the one, that I was the instigator of it, be-

(Testimony of Gene Hollenbeck.)

cause Sherman Call was, you see, he was the one that actually got the ball rolling, and there had been some understanding around there that I was the one that had done it, but all I had done was seen Shaw, see, I went over to talk to Shaw, was all, and I told Buck, I said, "I don't want you to get the idea, you guys to get the idea, that I am the instigator of this." We talked back and forth there about the men that, a couple of the men that they had working there that one, when one had come and asked for work he had told Buck, that was when Buck had his own plant, had his own business, that it would take him 12 hours to, or 13 hours to, do 8 hours' work, he admitted he was slow, and Buck said that if, he said he didn't see how, if they went union, that he could keep a man on and pay him time and a half for that extra work. [97]

Q. Did he name this man?

A. Frank Williamson, I believe, was his name.

Q. Did he name any others?

A. No, Buck never named any others that I know of.

Q. Did he say it would be just about impossible to keep having Abbie Roe as a bottle washer?

A. No, he never said it would be impossible to keep him. It seems, if I can remember, what he said was, it was about Abbie Roe's eyes, he was talking about giving these men a break, the argument was that the union would hang onto these men and he said they had been giving him a break

(Testimony of Gene Hollenbeck.)

by keeping Abbie Roe on, his eyes were bad, they would get a lot of chipped bottles and stuff like that, that would hurt business, he said that—

Trial Examiner Bennett: Let's have another question. And will you please both keep your voices up.

Q. (By Mr. Weil): Were you a member of the employee committee? A. Yes, I was.

Q. How did that committee come to be formed?

A. Well, I understand it was the stockholders that wanted the committee to come and talk to them, give them an idea what, try to find out what the trouble was, if there was any trouble. I guess it wasn't supposed to be connected with the union but it, I don't know for sure, I just—

Trial Examiner Bennett: I think we might confine this to what he personally was told. [98]

Q. (By Mr. Weil): How did you become a member of the committee?

A. Well, I was appointed.

Q. By whom?

A. I believe Cecil Thompson nominated me. I was representing the non-commissioned drivers of the Sherman Stump, and Cecil Thompson and myself and Schamber represented the commissioned drivers under the same foreman.

Q. You went to the first meeting? A. Yes.

Q. Do you remember when that meeting was held? A. No, I don't.

Q. Do you know how the meeting was called? Or do you know by whom it was called?

(Testimony of Gene Hollenbeck.)

A. All I know is that Sherman Call was the one that, it seems like——

Q. (By Trial Examiner Bennett): Who told you about the meeting?

A. Well, Sherman; I was thinking Clyde did. Now I am not sure, but I think he did. You see, Sherman had quit in the meantime.

Q. He quit before the meeting? A. Yes.

Q. (By Mr. Weil): He wasn't a member of this committee, was he? A. No, he wasn't.

Q. Do you remember anything that went on at this meeting? A. Well—— [99]

Trial Examiner Bennett (interrupting): Before we get into that, I would like to know if the witness knows anything more than he has already told us about how the meeting came about.

Q. (By Trial Examiner Bennett): Do you have any personal knowledge of it? Either you do or you don't. A. Just what I was told was all.

Q. You were told there would be a meeting?

A. That's what I say; I think it was Clyde, Clyde that told me.

Q. One of the men?

A. Yes, because I wasn't——

Q. (Interrupting): Now, tell us what took place at the meeting.

A. We went to the meeting and Gordon Mills asked the lawyer to leave, he asked for an introduction and told them that we didn't have our lawyer with us or anybody to talk for us, so, and the men had decided that he should leave and that

(Testimony of Gene Hollenbeck.)

we wasn't going to do any talking or anything until he did leave. And we never, all we did was submit our, what we thought we would like to have, on our contract that we drew up ourself to them, and they kept saying that they couldn't negotiate any at all, they couldn't promise one way or the other while this was going on, while, you know, the negotiating was going on there.

Q. (By Mr. Weil): You say you submitted a contract. Was that the list that I think Mr. Clevenger mentioned — not Mr. Clevenger — that Mr. Mills mentioned—the things that you had talked over [100] in the meeting of the committee itself?

A. Yes, rate of pay and holidays and time and a half, things of that sort.

Q. Do you remember anything else that was said at that meeting?

A. Well, they, one of the fellows there, I don't know who it was, kept trying to, was wanting to pin them down—the idea most of the fellows had when they went to the meeting, they was going with the idea that the dairy was going to tell us whether they were going to give us more money or not, and I think a lot of them there wanted to know whether, if the dairy was going to give them more money they wasn't going to go union; if they wasn't, why, they planned on voting for it.

Q. Do you remember a representative of the management saying anything about the company eliminating the Cascade route?

(Testimony of Gene Hollenbeck.)

A. Yes. I don't remember, I can't remember, who it was.

Q. You do remember, it was Mr. Lawrence and Mr. Little and Mr. Muller who represented management at that meeting, wasn't it? A. Yes.

Q. It was one of the three of them?

A. Yes, it was one of those three.

Q. Do you remember just what was said in that respect?

A. Well, they said that that route was taking around 12 to 13 or 14 hours, I guess it wasn't paying for itself then, and they could hardly keep it agoing if they had to pay time and a half [101] or anything over eight hours for it.

Q. Did you vote in the election? A. Yes.

Q. When you went into the election, did you understand that after the union was washed up that you would get a raise?

A. Yes, I was pretty sure, I thought we would get something.

Q. Did you get that raise?

A. I got five dollars.

Q. A day, week, month? A. A month.

Q. (By Trial Examiner Bennett): You say you had that understanding. Where did you acquire it?

A. When I had my conversation with Muller, Jim Muller.

Q. (By Mr. Weil): What did he say?

Trial Examiner Bennett: Could you fix the date first?

The Witness: I don't remember what day it was.

(Testimony of Gene Hollenbeck.)

Q. (By Mr. Weil): Was that the conversation we were discussing earlier? A. No, it wasn't.

· Trial Examiner Bennett: I don't think he gave us that.

Q. (By Mr. Weil): Who was, who else was, present at that conversation?

A. Just Jim and myself.

Q. Where did that take place?

A. We was talking around the lunchroom, outside the door of [102] the lunchroom.

Q. Was that before the day of the first union meeting?

A. No.

Q. Was it before the committee meeting?

A. It was just a short while before the election that they had posted, the first election.

Q. Shortly before the 18th?

A. It seemed to me like it was around four or five days, I wouldn't say for sure, but it was somewhere around in there.

Q. Somewhere around the middle of July, is that right?

A. Yes.

Q. Can you tell us what was said then?

A. He asked me, he would like to know what the trouble was, what seemed to be the fellows' troubles, the reason why they wanted to go union, and I told him that I thought it was because of the overtime we was putting in, around anywhere from two to four hours, us three guys, a day, that was Cecil Thompson and Sherman Stump and myself.

(Testimony of Gene Hollenbeck.)

Q. And then what else?

A. Jim said that he thought they would try to work out something for the fellows, they had been planning on it, but they just had never done it yet, he said they would try to work out something for the fellows to make up the difference on that over-time.

Q. Now, at the committee meeting, do you recall Ralph Little [103] telling, stating, something to the effect that after the union was washed aside they could make some wage adjustments.

Mr. Weston: We are going to object to that form of questioning as leading and suggestive. I think he can tell what Mr. Little said. There is no evidence here that he said anything about being washed out.

Trial Examiner Bennett: If you will first exhaust the witness as to everything that took place at the meeting, I will then permit you to go into another type of inquiry.

Mr. Weil: I understood he had done so.

Trial Examiner Bennett: Maybe he has. I want to find out if he recalls anything else about the meeting.

Q. (By Mr. Weil): Do you recall anything else about that meeting, the meeting of the employee committee with the management?

A. Well, I wouldn't say for sure who it was, but somebody kept asking, kept asking, whether there would be something done. They wanted to know if they voted a union out, if they wouldn't

(Testimony of Gene Hollenbeck.)

get anything, or if they would have to vote it in to get something, and of course they kept arguing they couldn't say what they would give us or anything like that because they wasn't supposed to, but, as I recall, it seems to me that Ralph Little made some kind of a nod that they would naturally try to work out something.

Q. (By Trial Examiner Bennett): Some kind of a nod?

A. Yes, (demonstrating) like that.

Q. You mean nodding his head? [104]

A. Yes.

Q. What came just before the nod?

A. Just the way I saw him do it was, he said when, whoever it was that was asking the question, they asked him, "Will there be something done for us if we do vote this out? How will we know? Will there be anything done for us at all?" And Ralph said, "I am sure, I think that something will be worked out (demonstrating)," like that, nodded his head.

Trial Examiner Bennett: That is all. Just what took place.

Q. (By Mr. Weil): When you went to vote, did you see Mr. Muller and Mr. Lawrence standing outside the voting place?

A. I saw Jim. I never noticed too much. That is all.

Q. Did he address you at that time?

A. Not that I know of.

Mr. Weil: I think that is all.

(Testimony of Gene Hollenbeck.)

Cross Examination

Q. (By Mr. Weston): How are you paid, Gene?

A. By the month.

Q. Do you get a commission, too? A. No.

Q. Just straight by the month? A. Yes.

Q. Is your pay dependent upon the size of your route or the amount of your work?

A. Yes, I believe it is, yes, the amount of hours that I put in.

Q. So your pay increases with the increase in your route and [105] the amount of hours that you put in, is that right?

A. If my hours went up, why, I would get a pay increase.

Q. When did you get your last increase?

A. Well, when everybody got a flat five-dollar raise down there.

Q. Did your route increase along about that time also? A. No. It went down.

Q. Did your hours increase?

A. The hours went down.

Q. (By Trial Examiner Bennett): From the time you got the five-dollar raise, your hours and route decreased? A. Yes.

Q. (By Mr. Weston): That is when everybody got the flat increase? A. Yes.

Q. Now, coming back to this meeting where Mr. Muller and Mr. Lawrence and Mr. Little appeared with your committee, do I understand that you presented some requests to the company for in-

(Testimony of Gene Hollenbeck.)

creases, time and a half? A. At the meeting?

Q. Yes. A. Yes.

Q. And they told you at that time, Mr. Little told you, that he couldn't give any increases as long as the union was trying to organize the company, is that right? [106] A. That is right.

Q. Did he explain that it was against the law to do it? A. Yes.

Q. He said he couldn't do it? A. Yes.

Q. He couldn't accede to your demands because the union was trying to organize the company?

A. Yes.

Q. At that time it would be improper for him to do it, isn't that right?

A. Yes. He said it would be against the law.

Q. Didn't one of the members of that group representing management explain to you that as soon as the election was over and the question of union representation was decided they could give, then give, consideration to your increases? Isn't that what they explained to you?

A. I don't understand you.

Q. This expression of the union being washed out, who made up that expression? Or was that made up? A. I never heard that.

Q. You didn't hear anybody on management say that? A. No.

Q. Didn't Mr. Muller or Mr. Little or someone there explain to you that they couldn't make any increases to you while the union was trying to organize? [107] A. Oh, yes.

(Testimony of Gene Hollenbeck.)

Q. But after the thing was all settled, then they could give some consideration to your requests, isn't that right? A. Yes.

Q. That is your understanding of what their position was? A. Yes.

Q. And then after you had the election on the 26th and the union lost the election, you got a five-dollar increase, didn't you? A. Yes.

Q. And that was after the election?

A. Yes.

Q. (By Trial Examiner Bennett): How long after the election did you get that increase?

A. Well, let's see. The election came the 26th.

Q. Which was a Saturday.

A. All right. The raise went into effect the following month.

Q. The following Monday?

A. The following month.

Q. August 1?

A. The following month after the election we got the first raise, on the 15th check, of two and a half.

Q. You get paid twice a month?

A. That is right.

Q. And you got it in your check for August 15? [108] A. Yes.

Q. What period of time did that cover?

A. From the first to the fifteenth.

Q. You get paid on the 15th?

A. From the first to the fifteenth, I get paid on the seventeenth.

(Testimony of Gene Hollenbeck.)

Q. And that check reflected a raise?

A. Yes.

Q. When did your hours change and the size of your route?

A. Right around that time there. I don't know for sure what day it was.

Mr. Weston: Did you ask him if his route increased?

Trial Examiner Bennett: Decreased.

Q. (By Trial Examiner Bennett): I believe you testified before that your hours and route decreased. Is that right? A. Yes.

Q. (By Mr. Weston): Didn't your route increase along about that period between July 26 and August 1 and then drop off again.

A. What date was that?

Trial Examiner Bennett: July 26 was the election.

Q. (By Mr. Weston): Just prior to the time of the increase hadn't your route increased and then dropped back off again?

A. You mean by time, the hours I was putting in?

Q. No. By customers, by volume.

A. Gosh, I don't know. [109]

Q. Does your volume go up and down or your hours increase and decrease?

A. Well, no. It doesn't make much difference on my hours because I have got a lot of driving. I drive, I think, about a hundred and ten miles a day. It don't take any longer to fill up and stop than it

(Testimony of Gene Hollenbeck.)

does to just partly fill up, so the hours stay about the same. * * * * *

Q. Who was it that told you to go ahead, your committee, to go ahead and meet with management, but it wouldn't do any good anyway? A. Mills.

Q. Was that his idea or did he get that idea from someone else? Did he tell you that?

A. I don't know. [110]

Q. What did he tell you about that?

A. When we was having our meeting Mills said the chances are they will probably have a lawyer there and we should ask him to leave and he said we just might as well be ready to not accept their offer, no matter what their offer was.

Q. So when you went into that meeting you weren't going to do what the company suggested, you were going to go union anyway, were you not?

A. That was the idea.

Q. So the meeting was just to be a formal affair, to sit down and meet, to listen to the company's story and then go union?

A. Yes. They took a vote of the committee there on that.

Q. Before the meeting?

A. Yes; our little meeting.

Q. That is when they decided that, right?

A. That is right. We had a secretary and everything and they kept a record of it. I don't know where it is now. * * * * * [111]

Q. Were you told that if you signed an application blank for membership in the union it would

(Testimony of Gene Hollenbeck.)

cost you five dollars on that date and twenty-five dollars later on?

A. That is what Mills said at a meeting. I believe he was there that day when Mills said it, he was having a heated argument with Johnny Heinze about this. Johnny was arguing against the union and Gordon said, "If you join now you can get in for five dollars, pay your first month's dues, and if you are going to hold off it will cost you twenty-five bucks to get in later."

Q. Was that the same time that he said if you didn't join the union you would lose your job?

A. Well, if they had a closed shop, it was talked about if they had a closed shop, I mean if they had one and you didn't join [112] the union you would naturally lose your job.

* * * * * [113]

Q. Did you actually have a contract there that day when you met with the committee?

A. We drew up one.

Q. Did anybody help you draw it?

A. Well, there was Gordon Mills, he kind of acted as the president of the outfit, and I believe that George Schamber was the secretary, took the notes, and then the fellows in each department told their representative what they wanted and we wrote it down on the paper, that is, George wrote it down.

Q. You didn't have a union contract there to go by, did you? A. No.

Q. Mills didn't have a union contract there?

A. Not that I know of, no.

(Testimony of Gene Hollenbeck.)

Q. Now, coming back to your original desire to go into the union, you say that was suggested to you by Mr. Shaw of the Wage and Hour Division?

A. Yes.

Q. While you were there, and Call, did he pretend to call or try to call one of the union boys?

A. That is right.

Q. And then they were to call back?

A. That is right.

Q. So really Mr. Shaw is the one who tried to organize you, isn't that right?

A. That is right. [114]

Q. With reference to this Cascade route, did Mr. Muller explain that the reason they were going to take that off was because it wasn't paying?

A. That is right. * * * * *

Redirect Examination

Q. (By Mr. Weil): At the committee meeting on this matter of the Cascade route, did you hear the statement to the effect that the company would have to eliminate the Cascade route if the union came in? A. Yes, I heard that.

Q. Did you hear any statement that they would have to charge [115] for shortages if the union came in?

A. Yes. I heard lots of stories like that, though.

Q. I say, at the employee meeting, at the committee meeting.

A. No, I can't, I can't really recall whether there was anything said like that at that meeting

or not. There was several times that they referred to a union plant like Arden, the different things they went through, that they had to account for their shortages and things of that sort.

* * * * * [116]

RALPH LITTLE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Weil): Will you give us your name and address.

A. Ralph Little, Route 1, Nampa, Idaho.

Q. What is your occupation?

A. Oh, dairyman and farmer.

Q. Are you connected with Home Dairies?

A. I am.

Q. In what capacity?

A. I am secretary treasurer and I am co-owner in the venture.

Q. The venture is a corporation, is it not?

A. Yes.

Q. Are you familiar with the Woodlawn Dairy?

A. Yes.

Q. Can you tell me who owns that?

A. Jim Muller and Buck, Carroll Lawrence, myself, and M. C. Muller and Chauncey Payne.

Q. Are those the same individuals who own Home Dairies? A. They are. [117]

Q. Does Home Dairies own any of the, does

(Testimony of Ralph Little.)

Home Dairies as a corporation own any of the, Woodlawn Dairy? A. No.

Q. What is the setup of Woodlawn Dairy? Is that a corporation? A. Partnership.

Q. Partnership. Are there any owners of Woodlawn who do not own shares in Home Dairies? A. No.

Q. Are there any owners of Home Dairies who do not own shares in Woodlawn? A. No.

Q. Who manages the affairs of Woodlawn Dairy? A. Muller.

Q. That is, Jim Muller? A. Yes.

Q. Who keeps their books? A. I do.

Q. (By Trial Examiner Bennett): Where is the office of Woodlawn Dairy?

A. We have an office in the Canyon Building.

Q. In Caldwell? A. Nampa.

Q. (By Mr. Weil): What business is transacted in that office?

A. Receiving monies from customers.

Q. How many employees do you have in that office? [118]

A. That is set up on a commission setup. They receive so much for the money received and they take care of their, with their own personnel.

Q. Who is "they"?

A. Floyd Russell is the manager. He is the only one I know personally.

Q. (By Trial Examiner Bennett): He is not an employee of Woodlawn? A. No.

Q. (By Mr. Weil): Then, stop me if I am

(Testimony of Ralph Little.)

wrong, then, Woodlawn, the actual buying and selling of Woodlawn and the passage of money is transacted by this office, is that correct?

A. They receive the money and turn it over to me. I am custodian of the funds.

Q. Does Woodlawn own its own processing equipment? A. No.

Q. Who processes their products?

A. They have a processing agreement with the Home Dairies.

Q. What is the gist of that agreement?

A. Buy and sell.

Q. Home Dairies buys and sells milk for Woodlawn?

A. No. We buy the milk, process it and sell it to them at a stipulated price, f.o.b. the factory.

Q. (By Trial Examiner Bennett): How many employees does Woodlawn have? [119]

A. They only have one at the present time.

Q. How about in July? A. One.

Q. Who was that?

A. Norman Stathopulos.

Q. He was the driver?

A. That is right. Of course, I was an employee. I spent time there.

Q. How about the truck that Stathopulos drives?

A. It is owned by the partnership.

Q. By Woodlawn? A. Yes.

Q. Does Woodlawn own any other equipment?

A. Oh, yes.

Q. What would that be?

(Testimony of Ralph Little.)

A. Oh, office equipment, another truck.

Q. Where is that office equipment located?

A. At the present time it is at 424 Twelfth Avenue Road.

Q. Is it used any in the dairy?

A. It is in use; I use the equipment.

Q. At Home Dairies? A. Yes.

Q. How about the other Woodlawn truck?

A. It is on a standby basis, the truck; the route has to go every day, so we have to have an extra truck.

* * * * * [120]

Q. Do you know if it has ever been used on a standby basis for Home? A. No.

Q. You don't know, or it has not?

A. To my knowledge, it has not.

Q. (By Mr. Weil): Who maintains the trucks owned by Woodlawn?

A. They pay for that on a basis of the cost of the maintenance.

Q. (By Trial Examiner Bennett): To whom?

A. To us, to Home Dairies.

Q. In other words, Home does the maintenance for Woodlawn on a fee basis?

A. On a fee basis, and that is paid monthly.

* * * * * [121]

Q. (By Trial Examiner Bennett): Who does make policy for the Woodlawn Dairy?

A. Partners.

Q. All the partners?

A. No. Muller and myself generally.

(Testimony of Ralph Little.)

Q. Who in the Home Dairies corporation makes policy for Home Dairies?

A. The Board of Directors.

Q. That consists of whom?

A. The stockholders. It is a closed corporation.

Q. (By Mr. Weston): Who pays this employee over there? A. Woodlawn.

* * * * *

RALPH LITTLE

a witness recalled by and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

* * * * * [124]

Direct Examination

Q. (By Mr. Weston): Let me clear it up this way, when was the first time that Mr. Baldwin or anyone representing the union talked to you about a union, in relation to the election?

A. Oh, Mr. Baldwin only talked to me once, and that was on the phone, but I don't remember the day.

Q. And what did he talk to you about?

A. He told me that we were telling our employees, making threats to them, and that we were making statements that were absolutely out of line and that he wanted it stopped.

Q. And that is when you told him that you weren't doing it yourself?

A. I was very much surprised. I had no knowledge of it whatever.

(Testimony of Ralph Little.)

Q. Did you assure him that the company would not make any such threats or statements?

A. Sure, I did.

* * * * * [127]

Q. Well, here is the letter that Mr. Baldwin wrote to you on July 18, that is in evidence.

Trial Examiner Bennett: You want the witness to see it?

Mr. Weston: Yes, please.

Trial Examiner Bennett: The record may show that the witness has been shown General Counsel's Exhibit No. 3.

Q. (By Mr. Weston): That letter, in that letter he states that he represents a majority of your employees and he demands that you bargain with him. Did you answer that letter? A. Yes.

Q. What did you state in that letter that you answered? [128]

A. That we would be willing to bargain with them after an appropriate election and showing that that was the case.

Q. And then it would be sometime after that that the election notice was posted on the bulletin board or shortly after that?

A. This notice came to me after Mr. Baldwin had talked to me on the phone. I think he told me on the phone that he was mailing it out that day.

Q. (By Trial Examiner Bennett): That he was mailing you the letter dated July 18?

A. Yes. I think he said he mailed it.

Q. (By Mr. Weston): So that after he talked

(Testimony of Ralph Little.)

to you about talking to the employees, then he set up this election and posted a notice on your bulletin board?

A. That was the next I knew about it.

Q. Now, can you tell us how long after he talked to you on the phone it was that the election was set up, just approximately?

A. I think it might have been the same day.

Q. Then, that first election was never held on that date, was it?

A. That is right.

* * * * * [129]

Q. And this was on about the 26th of July?

A. That was the 26th of July.

Q. So that would be about 10 or 12 days after you had this conversation with Mr. Baldwin and after the time set for the first election?

A. Right.

Q. And was Mr. Baldwin at that meeting?

A. Sure.

Q. Did he make any complaints about you talking to your employees at that time?

A. Not a thing, not a thing.

Q. Was he perfectly in agreement with this election?

A. He seemed to me.

Q. Was he?

A. I would say, definitely he was, yes.

Q. He made no objections to having an election?

A. Not a bit.

* * * * * [131]

A. Well, you see, it was determined that the count was 23 to 17, negative, and he folds up his

(Testimony of Ralph Little.)

ballots and he writes something to the effect on them that this was observed by the state or that it was conducted by so-and-so and signed his name on them and put them in his little brief case and locked up his little ballot box and stuck it under his arm and says, "Goodbye, boys. I will see you next year."

Q. He said he would see you next year?

A. Yes.

Q. How did you interpret that statement?

A. I interpreted it that he was going to be a self-invited guest next year.

Q. But not for a year, is that right?

A. That is the way he said it.

Trial Examiner Bennett: I suppose it might be construed as a solicitation to have another election.

Mr. Weston: Better luck next time, or something like that.

Q. (By Mr. Weston): And that is the last you saw of the state labor commissioner?

A. Yes, sir.

Q. What did Mr. Baldwin have to say at that time?

A. Baldwin took leave right after they verified the names.

Q. Did he have any talk with you?

* * * * * [135] A. No.

Q. Along about the 23rd of July, you consented to an election to be held by the National Labor Relations Board, didn't you? A. Right.

Q. That petition was withdrawn, wasn't it, by

(Testimony of Ralph Little.)

the Board? A. The 23rd of July?

Q. Sometime later. A. No.

Q. About August 1, didn't you receive a letter from the Board suggesting that your petition for an election had been withdrawn?

A. Yes, we had an election.

* * * * *

Q. With reference to this meeting that you had with the committee that has been talked about here today, there was some statement as to a statement that you made as to the company's position with [136]. reference to raises or paying time and one-half for overtime. What did you tell the committee that day in that respect?

A. Well, to get up to the point where the statement was made, Mills was pressing me about certain hours and time and a half and so on, and "Will you do anything about it," and "This is our plan," and I merely made the statement that we were not at liberty to make any, to enter into any, agreements with the employees at this time due to the fact that the union was in the process of organization.

Q. Did you make any statement at that time about doing something when the union was washed up or something like that, or washed out?

A. I did not.

Q. Did anybody representing the company make that statement there that day?

A. That phraseology was never used.

Q. Was anything of that kind stated as to when

(Testimony of Ralph Little.)

you could make raises? A. No.

Q. The committee merely submitted a group of grievances or a list of demands and you discussed it pro and con and explained that you couldn't do it at that time, and did anything else happen at that meeting?

A. No, I don't think so. Everything that happened at the meeting was relative to wages and hours. * * * * * [137]

Cross Examination

Q. (By Mr. Weil): Who conducted it?

A. Gordon Mills was chairman of the employee group. [138]

Q. Who was chairman of your group? There were three of you there, weren't there?

A. We were there, all three of management.

Q. (By Trial Examiner Bennett): You had no particular spokesman? A. I don't think so.

Q. (By Mr. Weil): Wasn't that meeting held on the same day that the notices were first, or—yes, that the notices were first posted? A. Sure.

Q. You stated that you called Mr. Weston. Wasn't Mr. Weston already there at that time, or was that before or after he was there at the meeting?

A. Well, now, wait a minute. We called Weston, we called Weston, I think I talked to Mr. Weston in the morning. Mr. Robinson called in the morning and said there would be an election posted and I talked to him after that possibly.

(Testimony of Ralph Little.)

Q. When did Mr. Robinson come out to post the notices?

A. I don't know if he even posted them. He posted them during this time that we were in session in the employee meeting.

Q. It was after Mr. Robinson's call that you called Mr. Weston?

A. I called him after Mr. Robinson called Mr. Lawrence.

Q. Then Mr. Lawrence must have told you about Mr. Robinson's call? A. Yes. [139]

Q. In order for you to call Mr. Weston?

A. Yes.

Q. (By Trial Examiner Bennett): Is that right? A. Yes, that is right.

* * * * * [140]

Trial Examiner Bennett (interrupting): To who, now?

Mr. Weil: Mr. Helton.

A. At the meeting?

Q. (By Mr. Weil): Yes. A. As to what?

Q. As to the possibility of a wage increase being worked out.

A. Not that I remember. I don't remember of that.

Mr. Weil: That is all.

* * * * *

Redirect Examination

Q. (By Mr. Weston): After the election on the 26th, did you call me and ask me anything with reference to raises or pay increases? [141]

(Testimony of Ralph Little.)

A. Yes.

Q. What did I tell you?

A. You told me after the matter of representation had been settled by an election, we were free to proceed as we saw fit.

Q. Was it on that advice that you made your increases? A. Right.

* * * * *

(The document heretofore marked Respondent's Exhibit No. 1 for identification, was received in evidence.)

* * * * * [142]

RESPONDENT'S EXHIBIT No. 1

Department of Labor
State of Idaho
401 Sun Bldg., Boise

Home Dairy
Nampa, Idaho

July 16, 1952

Gentlemen:

By the provisions of Section 44-107 of the Idaho Code, this Department is required to conduct an election for the purpose of determining the bargaining agent of employees, whenever, requested to do so, either by the employer or the employees.

The employees of your establishment have requested such an election. Carrying out our usual practice, we have prepared notice of such election which must be placed in your establishment.

The election will be July 18, 1952, at the hour of

4:00 p.m. at your establishment in Nampa, Idaho. At that time all eligible employees in the voting unit who were on the payroll as of July 12, will be permitted to cast a secret ballot.

We ask that you designate some official of your company to act as an observer for the employer. We will permit the Union to have present one observer. After all have voted who desire to do so, the ballots will be tabulated and a certification made.

We would appreciate it, if you would have a list of the employees for our use at the election.

Yours very truly,

/s/ W. L. ROBISON,
Commissioner.

WLR:vs CC: Mr. Fred Baldwin, Sec. Teamsters
Local No. 483.

JAMES MULLER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

* * * * * [144]

Q. (By Mr. Weston): Coming down to your conversation with reference to the Cascade route, was some reference made to the Cascade route at this meeting with the committee?

A. Not with the committee, that I know of. That is, the committee that met with management?

(Testimony of James Muller.)

Q. Management, yes.

A. I do not to my knowledge have any, know of anything coming up, regarding that meeting.

Q. When was it that you discussed the Cascade route and with whom?

A. It must have been at a time earlier than the meeting, if it was discussed, and it has been discussed more than once, that route.

Q. I see.

A. Because that route has been a long route from the time the first man was on it, and it was always a long drawn-out route for hours, and it wasn't a paying route other than we had the hope that it would pay sometime, and we were willing to pay a reasonable wage, which we thought was reasonable at that time. I don't know exactly without checking the records what that was. And the man on the route was willing to take it under that wage and as far as any discussion on paying more, it never, to my knowledge, it never came up.

Q. You don't recall telling them that you were going to take [146] that route off?

A. I might have mentioned that more than once, probably before this union ever was mentioned in our organization. And it was subject to whether it would pay or depending on the conditions in the summer and winter. Today that route has dropped from six days to week to three days a week.

* * * * *

Q. (By Trial Examiner Bennett): You said

(Testimony of James Muller.)

something about the summer. Is that a route that fluctuates with the summer business?

A. It has, yes.

Q. You have more business there in the summer than in the fall? A. Yes, that is right.

Q. (By Mr. Weston): With reference to Mr. Hollenbeck's pay, he testified that he got a ten-dollar increase at a time when his hours were going down?

A. I think that was a five-dollar increase. The over-all picture, it was stated that all men got a five-dollar increase. On this one route, it was a long route at that time, and it was in motion that that route should have ten dollars more, ten dollars more a month if it continued as it was. And I believe, if I am not, I could be wrong, but I believe that there was three days or four days after the first of the month that this route changed from a ten-dollar-a-month-paying-more-route down to an average [147] route. And that happened two or three days after the first of the month. So there was a ten-dollar raise set for that route on account of it was a long route.

* * * * *

Q. What about this committee? How was it set up in the first place?

A. Oh, the committee was set up, it was brought to me, I think, more than once it was brought to me by Mr. Mills that "Jim, you had better do something," he says, "the men are all going to join the union and you don't want the union, the union is

(Testimony of James Muller.)

no good, it's [148] no good for your operation, and it was said that we should suggest it to you." And I said most of the fellows were getting along on the same compensation, that our operation was so I didn't know just what could be changed to make the fellows understand our method of what we can pay, so it was brought up to have a meeting, we should have regular meetings once a month or more, and he suggested getting a meeting up, that is, Mr. Mills.

Q. (By Mr. Weil): When did this take place?

A. This was taking place, I would say, possibly one week or two weeks before we had this one meeting, and we refrained from having a meeting when the union was dealing with the men and I think myself I kept from having a meeting with the men on that business, on that deal, because they were in organizing, formal organization.

Q. (By Trial Examiner Bennett): You said that he suggested the formation of the committee, is that right?

A. He suggested the formation of the committee, not how to go about it.

Q. What happened after he made that suggestion?

A. Well, I would say that just a regular conversation went on, there was nothing more done about it at that time, although I had a mind, in mind, having a meeting, and then it was brought up by me for more of the fellows to have a meeting, so with the knowledge of talking it over with the rest

(Testimony of James Muller.)

of our organization we decided to, I decided to, we decided to, meet with them on a meeting, so I suggested then to each division to sponsor a man and if [149] they wanted to meet, why, we would meet.

Q. (By Mr. Weston): Did you tell each department of the operation to pick a man?

A. I believe that is the way it went out.

Q. And then later on you had the meeting?

A. That was to give each department a chance to talk if they wanted to be represented that way. And at that time there had been no talk of any election. * * * * *

Cross Examination

Q. (By Mr. Weil): Can you tell me who the individuals were who suggested to you, you stated that first Mr. Mills suggested having a meeting and then the two others——

A. No, I couldn't, I wouldn't know, because I met with all the men, I talked with them all the time, I am around the premises all the time and I have no office and my job calls for talking to them, and so I have no way, the only reason I remember this conversation with Mills on that question is that he said, "You better do something, your men are going to go to the union and I [150] know a lot about the union and it's not good for your business."

Q. And you say that conversation took place two weeks before the meeting? A. I would guess.

(Testimony of James Muller.)

Q. (By Trial Examiner Bennett): Two weeks before the actual meeting?

A. Yes, and before the election.

Q. (By Mr. Weil): It was about the Fourth of July?

A. I wouldn't say to the date. I know it was ahead of the election.

* * * * * [151]

